No. 2400

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME VI

PAGES 2669-3240

FILED
APR 4 - 1914

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

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P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.

WM. D. FENTON,
Portland, Oregon.

For Appellants—JNO. L. SNYDER, *et al.*:
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:
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A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.

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For Appellee:

JAMES C. McREYNOLDS,
Attorney General.

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U. S. Dist. Attorney for Oregon.

B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the Attorney General.

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"OREGON and CALIFORNIA LAND GRANT

"HEARINGS

"BEFORE THE

"COMMITTEE ON THE PUBLIC LANDS

"HOUSE OF REPRESENTATIVES

"ON

"H. R. 22002

"CONCERNING THE OREGON AND CALI-

"FORNIA LAND GRANT

"APRIL 2, and MAY 2, 6, 8, and 25, 1912.

"WASHINGTON

"GOVERNMENT PRINTING OFFICE

"1912."

(Pages 55 to 66 inclusive.)

[2669]

"Committee on the Public Lands,

"House of Representatives,

"Wednesday, May 8, 1912.

"The committee met at 10:30 o'clock a. m., Hon. Joseph T. Robinson (chairman) presiding.

"There were present before the committee Hon. A. W. Lafferty, a Representative in Congress from the second district of Oregon, and Mr. A. C. Dixon.

"The Chairman. Gentlemen of the committee, the hearing today is on H. R. 22002, by Mr. Lafferty. Mr. Dixon desires to be heard, and we will now hear him.

"STATEMENT OF MR. A. C. DIXON.

"Mr. Dixon. Mr. Chairman and gentlemen, I am representing primarily the Booth-Kelly Lumber Co., the largest purchaser from the O. & C. Railroad Co. of the grant lands under discussion. I am also authorized to speak in this connection for practically all of the 45 large purchasers who are parties in these suits. I feel that after what Mr. Townsend has said I can add very little of interest, and my chief purpose in taking your time now is to touch upon a few points which I think bear especially on the rights of these purchasers, and also to be subject to any questions you may want to ask concerning some of the points brought up the other day, and upon which I may be able to enlighten you.

"Now as to our views relative to our situation and to the compromise, we feel that the Government can

afford to be very considerate of us for a number of reasons. First, going back to the purpose of Congress in granting these lands, it was primarily that the road be built, and, secondarily, that the country be developed as a result of this grant of land. We take the position that we have aided in the development of that section of the country to the fullest extent, and that in no other way could the lands have been used for development except in the way we have used them.

"The reason for that is this: The land is heavily timbered, much of it on steep hillsides, and in most instances the soil is rocky and not susceptible of cultivation. Now, no actual settler could have taken 160 acres of these lands, nor 1,600 acres, nor any other number of acres, and made a living for himself and family. It would have been practically impossible, and is today, with the better means of transportation and other facilities that they have now. We have taken these lands and solidified them by buying the even-numbered sections and have built mills, made large investments, built towns, and furnished employment to hundreds and thousands of people. Now, just to spend a moment on that point. In our own instance the largest town that we have, the town of Wendling, is devoted entirely to milling. There are about 800 people there, with 300 men working in the mills and timber. They have an electric-light system, water system, and all the conveniences that a little town of that kind might have. The wages we pay are good—excellent, I should say—from the point of view of people here. Twelve dollars a week is the minimum for mill-

men and $17.50 is the average for employees in the woods. The more provident among these men mostly have their own homes or own farms elsewhere that they cultivate during a part of the year, and in every case they are better situated than the average or than almost any of the homesteaders in that section. I mention this town first, but there are dozens more there in a similar situation. In addition to these, there are a number of logging camps and mills where there are many men employed and where there are no towns, and these people naturally gravitate to the larger towns, such as Eugene, where I live. This is a town of 10,000 people now, and 10 years ago there were only 3,500 people there. The pay roll of the mills nearby is about $2,000,000 a year, and the development of the milling industry is almost the sole reason for the growth of the town.

"Mr. Townsend mentioned the other day the good faith with which these lands were purchased, and in this connection I wish to speak simply of our own case. We started out 16 years ago, without any capital of consequence, and upon the suggestion of Mr. Collis P. Huntington, of the Southern Pacific Co., we leased a small sawmill in the Willamette Valley with the idea of trying to find out if fir lumber, the only timber growing on these lands, could be shipped outside of the State at a profit. Up to that time there had been no market for, and no attempt to ship, fir lumber out of the State of Oregon. Mr. Huntington made us some special rates and we leased a mill for a year and started to develop the fir-lumber market. At the end of a year Mr. Huntington

stated to us that the rates were fairly satisfactory to him, and he would continue them in force. We found that we had made a fair profit, and accordingly we bought the mill which we had under lease. When we bought the mill we had to buy something to run it on, and so we bought timber near at hand, half of it from the railroad and the other half from settlers or whoever happened to have it. That was the beginning of our business. A year or two later the business still continued to show a profit and we purchased another mill and also another body of timber, and for a period of eight or ten years we bought these different bodies of timber at the going prices at which anyone could have purchased them if they had cared to. Now I do not think I need to dwell long on this point, because Mr. Townsend has said that in all of his investigations he has found no evidences of any fraud, and I know the circumstances in all of these cases, and it is hardly possible to think that there could have been anything of that kind. The lands were open for purchase and sale, and you or I or anybody else could have bought all of them if we had had the money to do so.

"Now in buying these lands we followed the business-like custom that we still follow, and I think that all of you would in like circumstances follow. We submitted each abstract to our attorneys, and in no single instance that I know of did they question the Oregon and California Railroad's deeds or raise any question whatever as to their title. As Mr. Townsend has told you, there was no question in the minds of anyone as to the validity

of these titles, and, using his expression, the titles were current in Oregon for years and years, and not only in Oregon but with the United States Government, because our company in several instances, and other companies, traded property with the Government, traded these lands back to them for other lands. We do not claim that we have a right to consider because the Government took the lands that the titles were good, but they made no question about it. I am simply telling you this to show you that they were just as ready to take them as anyone else.

"Now as to the suits themselves. There are 45 of these, covering approximately 400,000 acres of land. The other 400,000 acres which have been sold are in the hands of four or five thousand people. We do not want these small holders sued. Certainly not. But we are unable to see the difference between the titles that we have and the titles that they have. In other words, we do not see why 400,000 acres in the hands of 45 individuals and corporations, probably two or three hundred people altogether, stands in any different relation to the Government as to ownership than the 400,000 acres in the hands of four or five thousand people.

"Now, in the case of the Drew Timber Co., one of these parties: They bought 5,320 acres, and they have 11 bona fide stockholders, less than 500 acres to each stockholder. I fail to see the justice in attempting to take these lands away from these people when, if the 11 people had only known the circumstances, they could have gone out and bought 999 acres apiece and their

titles would not have been questioned. Our company owns 74,000 acres, and there are approximately 45 of us—some of the stockholders are estates—and there are more people interested in our company than there are thousands of acres involved. Now, the question was asked the other day as to the remedy we have against the railroad company. Our attorneys, and all the attorneys that have given the matter any attention, so far as I know, have said that we could not recover. Now, whether the railroad company knew this limitation or not I am not prepared to say, but they did not give us warranty deeds, and even if we could get back from them several years hence the amount that we paid for these lands we might about as well lose the whole thing. What we could recover would amount to but very little, as compared to the actual loss sustained, and I will illustrate one particular case. The last purchase made by us was 19,000 acres bought at $17.50 per acre. We bought the land from people who had bought it from the railroad company for $10 an acre, on time, with eight payments still to be made, and we assumed the contract and have made seven of the other eight annual payments still to be made. Now, when we got that 19,000 acres we planned another large milling enterprise. We bought this in 1905, and we immediately went to work and bought 19,000 to 20,000 acres intermingled with this 19,000 acres. The only way that land can be operated successfully for lumbering purposes is to have it all in a solid body. You can't have a checkerboard tract, and you can't build a railroad and cut logs on other people's

land. Now, it does not need any explanation to show you where we would be if we only got our money back. In the first place we can not get more than $10 an acre, and in the second place we can not get that until our title is proven perfect, and that will evidently be some time hence, and, as stated, our attorneys advise we could not recover then.

"Now, as to our operations. In our particular case one of our mills burned down during the pendency of this suit. Our largest mill burned in July last year, throwing out of employment perhaps 275 or 300 men. We still have the mill site, and we are anxious to rebuild; we are almost tempted to rebuild anyway, but we do not feel that it is a safe business proposition to put that money into a mill when we do not know for sure that we are going to have anything to operate the mill on, if the Government is successful in this suit and takes the land. Two other concerns have lost their mills by fire and are in the same situation. In addition to that, if we rebuild now and go on with developments we will have to borrow money, and we can't bond our lands or raise money on our property on account of this suit.

"Four years ago I happened to be in Washington on other business when this resolution came up, and seeing, as I thought, that it was dangerous to us, I sent for some of our people, and you are fairly familiar with the efforts that were made to have our titles quieted at that time. At that time the Attorney General and Mr. Townsend, and as far as I know the majority of the Public Lands Committee, were in favor of and were

anxious to have our titles quieted. It seems to me now, and I am sure I thought then, that there should be no trouble at all to get title to these lands and get entirely out of the difficulty if it were not for the one legal point that was made, which was that to quiet our titles then would have injured the Government's case against the railroad. The files of the committee and the files of the department will show the investigations that were instituted at that time. They went into the matter very fully, and there were several volumes of testimony published. It seems to me that it goes without question that unless circumstances are different Congress should be of the same opinion yet, and now that the way is open grant us the relief that we are asking.

"As to the compromise itself, we think there is no question about our good faith in the purchase of these lands. We think that there is no question about the original purpose of the Government having been literally carried out in a much better way than it could have been under actual settlement. In this regard Secretary Fisher, in talking to me the other day, said that if the lands were of the character I said they were the Government made a tremendous mistake in 1866 in granting to the railroad company lands of a character not susceptible to settlement and then asking the railroad to sell them only to actual settlers. Now, they did do that, and you must know without seeing photographs of the timber that these lands are timber-lands or we would not have them, because we are in the timber business only. Now, if the Government did make this mis-

take 40 years ago we ask you here that we be relieved from the ill effects of it. We do not want to pay the penalty for the mistakes of the Government. We have cut over about 15,000 acres of land. We have done the larger part of the work necessary to make that land valuable for cultivation, and nobody wants to buy these lands now as homesteads at any price. Eighty-five or ninety per cent of them are useful only for reforestation, and we have not started to reforest them because we do not know to whom they belong. We have spent the necessary money to clear them of timber, and if the intention was that actual settlers should make homes on these lands, how much less useful for this purpose would they be if the timber was still standing?

"Now, for the reasons I have stated, we do not feel that we ought to have to pay anything to get these titles in good shape, but we have been sued for something over three years and have not yet had a chance to appear in court. We foresee that it will be at least five years longer before the suit can be determined. In the meantime, on the very lands in question we are paying something more than $20,000 a year in taxes, and we are paying several thousand dollars a year for fire protection. We have a force of organized rangers for that purpose, and we are also paying interest on our bonded indebtedness on these lands. Now, notwithstanding the fact that we do not feel that we ought to pay anything, and that Mr. Wickersham and Mr. Townsend, down in the bottom of their hearts, feel that we ought not to, except as a legal proposition—notwithstanding these

things, we have made a proposition to pay the sum mentioned in the bill as a matter of expediency, so that we may know now where we are at. We had better lose these lands now than to go along for a number of years and let them lie idle and finally get them, because the damages to us in the meantime would be irreparable financially and so far as the ages of some of us are concerned. We can not get our youth back, or our efforts. Three or four of the largest holders of lands have died since this legislation was passed four years ago. We are trying to bring about a settlement which will leave the rest of us alive when the title is finally determined.

"Our course if this bill is not passed will not be one of our own choosing, but will be literally forced upon us. In that case we will be compelled to intervene in the railroad suits and add our equities to whatever equities the railroad people may have, and make the hardest kind of a fight we can to get our lands and also to help the railroad company out of their difficulties. Now, Mr. Townsend gave you a partial history of this resolution. There was never any trouble in Oregon, never a word said or any complaint about the lands that were sold. The whole difficulty arose when Mr. Harriman withdrew the lands from the market. The people and the commercial clubs and various organizations in Oregon started the agitation and sent a memorial to the legislature asking that the lands be sold and opened to settlement. During all this time, the four years since this resolution was introduced in Congres, we have carefully refrained from allying ourselves with anybody, because from the state-

ments of the Department of Justice, the President, and every one else we felt the time would come when our skirts could be cleared without injuring the railroad suit, and the Government would see the justice of our case and our titles would be quieted. We are urging that upon you today. I am not like Mr. Townsend. He would like to see section 6 passed, but he will not urge it, but I do earnestly urge upon you that this compromise be arranged. I do not make this as a threat, but as a statement of fact. If relief is not afforded we will have to tie up with other litigants in a way that may result in defeating the primary purpose of the Government as to the recovery of the railroad lands. If the suit is won against these purchasers it will tear down industries in which millions of dollars are invested. Our company at the time this resolution was introduced had over a million dollars invested, in improvements; $275,000 in railroads and equipment, and something over $700,000 in sawmills. There are a number of others that have the same or larger investments. If this suit is won, their property will be worthless; the property in the mill towns will be worthless, the homes that these men own will be worthless, and there will be several thousand employees out of positions. That will be the condition if the Government takes this land and puts it into forest reserve or into the public domain.

"Now, I think, with what Mr. Townsend has said, I have about covered the situation, and I do not feel like imposing on you any longer.

"The Chairman. Mr. Dixon, you stated that those

whom you represent, the parties in the 45 suits, do not wish to see the small purchasers sued, but as a matter of law their equities are absolutely the same as yours, which seems to be true. You have also said that unless this legislation or some similar legieslation is passed, those whom you represent will be compelled to intervene in the railroad suit and help to win that suit if possible for the railroads. What is the attitude of the purchasers whom you represent—what will be their attitude in the event that this legislation should be passed?

"Mr. Dixon. Well, Mr. Chairman, we are not interested at all in the other side, and our attitude would be one of neutrality.

"The Chairman. Actual neutrality or nominal neutrality?

"Mr. Dixon. So far as my company is concerned it would be actual. So far as I know I think it would be absolutely actual with all the defendants. I do not think any of the defendants are meddlers or anything of that sort.

"The Chairman. I did not mean that at all, but you can readily understand from the statement of Mr. Townsend and from your statement that this is a matter that widely affects the feeling and interest of the general public there, and you yourself have volunteered the statement that if the legislation is not passed you will help to win the suit for the railroads, and that you are in fact in sympathy with those who are in the suit. Now, I think the committee is entitled to know, without any feel-

ing toward anyone, since you have volunteered that statement, what your attitude will be if the legislation is passed. We are entitled to know that, since you have volunteered the suggestion that in the event the legislation is not passed you will join in with the railroads to help them win this suit.

"Mr. Dixon. If the legislation is passed, our first move will be to ask for a stipulation and then pay for the lands gotten under the railroad deed. After that is done we will observe, so far as our company is concerned, absolute neutrality. Our desire has been to see these lands opened up. We are embarrassed by the railroad holding up 2,400,000 acres, and the whole State has been kept from its proper development thereby. And I may say to you further in this connection, I was in a number of meetings where the resolutions were brought out and sent to the legislature, where we were considering this whole proposition, and the only desire of every one present was that these lands be sold. None of these people had a clear idea as to the rights of forfeiture. Our idea simply was to force the railroad company to sell these lands. We are in that attitude today. We want them sold.

"The Chairman. You have stated that the lands you have are not fit for actual settlement. Is the general character of these lands the same?

"Mr. Dixon. Well, as I stated, the fact that we purchased the lands for lumbering purposes is pretty good evidence that that land is not fit for actual settlers. As

to the railroad grant itself, I have been over it pretty well a number of times and out into the timber, and I think the actual percentage—anything that I might say would be a guess, but 20 per cent would be a pretty close guess—I think there might be 20 per cent of these lands that can be cultivated. This whole subject was crystallized on account of the refusal of the railroad company to sell some agricultural lands in Josephine County to a vineyardist. He had a vineyard down there, and I think it was 80 acres alongside of his vineyard, belonging to the railroad company, that he wanted to buy. They refused to set a price on it, and that is where the whole trouble started.

"The Chairman. What is the general description of the lands which your client holds?

"Mr. Dixon. They are all timbered lands; all covered with fir timber. They are rather hilly, usually along a little canyon with a creek running down the center. We have five timbered bodies, each one along a creek or river. We like to have them that way on account of the facilities for operation. The timber is cut and hauled down to the creek; then we build dams and float it out to the river or railroad it out.

"The Chairman. You heard Mr. Townsend's statement as to the value of the railroad lands, did you not?

"Mr. Dixon. Yes.

"The Chairman. What do you say as to the value of those lands?

"Mr. Dixon. He said he was certain that they were worth $25 an acre, and that some of them were worth as high as $30 an acre. I have been buying those even-numbered sections for our company for some time back, and the highest price that I have ever paid is $22 an acre, and that was within the last three years. It is only within three years that I have purchased any for the company. I have purchased several thousand acres in that time.

"The Chairman. Are those lands rising in value?

"Mr. Dixon. I think so, yes. There is no question about the increase in value. They have increased since we purchased them, although our own lands are not worth as much as we paid for them on account of the cloud on the title.

"The Chairman. What area of the lands purchased from the railroad company or their grantees by your people have been cut off? Do you know, approximately?

"Mr. Dixon. Well, in our case we have cut about 15,000 acres, and half of that is from the lands in question.

"The Chairman. Has there been any cutting recently done?

"Mr. Dixon. We have been cutting them steadily at a uniform rate since 1898.

"The Chairman. What area of lands that have been cut off have been sold, approximately?

"Mr. Dixon. Practically none.

"The Chairman. What area of them, if any, has been cultivated?

"Mr. Dixon. Practically none. They are not susceptible of cultivation. Our idea has been to reforest them, and we have left the small timber standing for that purpose.

"The Chairman. When was the first knowledge received in that country, actual knowledge, that there was any question as to a defect in these titles?

"Mr. Dixon. In 1906.

"The Chairman. And that was occasioned by a complaint made by some one who you say was a vineyardist to use the land for a vineyard and the railroad would not sell it to him?

"Mr. Dixon. The first I heard of it was in Josephine County, near Grants Pass, just outside of the city. There had been a great deal of irritation over the State, but it had never gotten any further than the murmuring of a general spirit of discontent. There was a good deal of cursing and damning the railroad company for not disposing of the lands, and about that time there was called a shippers' meeting to discuss freight rates and matters of that kind down at Medford, in Jackson County, just south of Josephine County. At that meeting a resolution was introduced to be presented to the legislature. These people came to discuss freight rates, but some of them brought this resolution in and intro-

duced it, and it was passed. This was done in three or four towns over the State, and finally they got a Mr. Mullit, a banker from Ashland, to introduce the memorial in the legislature.

"The Chairman. Well, now, why would you and your clients want to intervene in this railroad suit?

"Mr. Dixon. For this reason. Our idea in wanting to compromise is to get out of litigation, and if we cannot do this the only way we can hurry matters, advance them, is to get in the railroad suit. The object of the Government's attorney is to keep us behind the railroad company, and not let us come to trial before the railroad company does, because they fear our equities will allow us to win out and thus aid the railroad company. Our only purpose would be to crowd ourselves up and be in the first trial as a matter of expediency and to hasten the final decision.

"The Chairman. You feel that you have superior equities to any that the railroads may assert? Wouldn't you be rather strengthening the railroad case than strengthening your own case by intervening?

"Mr. Dixon. I do not feel that we would be strengthening our case at all and I do not think that our attorneys feel that the court would do an injustice to us simply because we were allied with the railroad company. We would get our rights and the railroad company would get theirs, but Mr. Townsend seems to be afraid that intervention on our part might prejudice his case.

"The Chairman. In other words, the influence, the actual influence, which the clients whom you represent might reflect for the benefit of the railroad company? That was clearly the intimation that Mr. Townsend made, and I think the committee may very well consider that without reflecting on anybody.

"Mr. Dixon. We don't think it would be anything of the sort. The main idea in allying ourselves with the railroad company is to get into court at the same time they do. If we do not get this compromise, the first thing I will do when I get home will be to discharge our employees and close down our mills, because there is a great question in the minds of our attorneys as to whether or not we will be asked by the Government to pay double or treble damages for trespass on their property.

"The Chairman. You mean that they might demand an accounting for the lumber taken?

"Mr. Dixon. It just depends on the situation here in Washington, the Attorney General, the temper of Congress, or something of that kind. Our attorneys have advised us that they thought it was not a good business proposition and they recommended against continuing our operations.

"The Chairman. As a matter of law, you would probably be held accountable for the timber cut if you lost the land.

"Mr. Dixon. We do not want to take any risk, anyway.

"Mr. Raker. In speaking of intervention, is it not a fact that some of the owners claiming from 500 to 1500 acres, who received their lands from the railroad company as part of this grant, as well as the company which you represent and the 45 others, sought to intervene in the railroad suit, and the court held that they could not intervene?

"Mr. Dixon. No, I think not; Mr. Lafferty went over that quite clearly in his presentation. The intervention that occurred, as I understand it, was the intervention of people who had settled on these railroad lands, made actual settlements on 160 acres, with the supposition that if this suit was determined in favor of the Government they would be first on the ground and would get 160 acres at $2.50 an acre, and they intervened to establish their rights. If I understand correctly, their intervention was of no avail.

"Mr. Raker. No one up to date has sought to intervene who owns lands obtained from the railroad company.

"Mr. Dixon. Not so far as I know; and I think I am correct in that. The taking of evidence in the railroad suit is to close the 1st of July, and I presume the trial will come soon after that. If we are going to intervene we will have to do it very soon.

"Mr. Raker. Of course, the amount involved in this suit and its character is one that could be—you have stated you are not an attorney?

"Mr. Dixon. No, sir.

"Mr. Raker. You do not know anything about the proceedings?

"Mr. Dixon. Only in a general way.

"Mr. Raker. Very well, I will change that question. Do you intend to convey to the committee the idea that if your people would intervene in this suit, that with their influence they would be in a position to influence the decision of the court now trying the case?

"Mr. Dixon. I would not want to insult the court, Judge Raker, by inferring anything of that kind.

"Mr. Raker. I know; I am only taking the statement made.

"Mr. Dixon. The statement was that our superior equities, according to Mr. Townsend's statement, might work against the main suit. We have no influence with the court, so far as I know. I do not know the court in Oregon, and I do not think there is any member of the company that would think of such a thing.

"The Chairman. Mr. Townsend did clearly state that one of the reasons which influenced the Government and the Department of Justice in eliminating the purchasers of areas under 1,000 acres was to prevent having to encounter the influence which would manifestly and naturally be exerted by so great a clientage.

"Mr. Taylor of Colorado. By reason of their equities.

"The Chairman. Yes. I do not think that Mr. Dixon mentioned anything of the character that Mr.

Raker suggested.

"Mr. Dixon. I certainly did not intend anything of that sort.

"The Chairman. I drew the inference from the suggestions made by Mr. Townsend that the same thing might result by reason of the superior claims of the parties in these 45 suits.

"Mr. Raker. Now, Mr. Dixon, if you feel that your equities and the equities of the 44 other parties that have been sued are of such a character that by presenting them to the court in conjunction with the railroad company's case—do you state to the committee that you believe that by combining your equities you would have a sufficient standing in court to have the court decide in favor of the company and, of course, eventually your people and the other 45 by virtue of that superior equity combined?

"Mr. Dixon. I think I have stated to the committee that that was Mr. Townsend's idea that it might be the final result.

"Mr. Raker. Is that your opinion?

"Mr. Dixon. I have no opinion on that point.

"Mr. Raker. Have you discussed it with your associates and counsel and others interested in that matter?

"Mr. Dixon. No; the first suggestion that came to us was from the Department of Justice.

"Mr. Raker. What is that?

"Mr. Dixon. I say, Judge Raker, that the first suggestion of this particular point came to us from the Attorney General, as going to show one of the reasons why he was in favor of a compromise.

"The Chairman. Do you know how many corporations own the land that you appear for?

"Mr. Dixon. How many of the 45 are corporations?

"The Chairman. Yes.

"Mr. Dixon. Almost all of them.

"The Chairman. Do you know whether any of the stockholders in these corporations are also stockholders in the railroad company?

"Mr. Dixon. That is not my understanding, unless some of them may own a little Southern Pacific or Union Pacific stock, just as any individual might. I do not think there is any connection in any way.

"The Chairman. Is there any considerable number of the stockholders in the purchasing corporations who are also stockholders in the railroad company that sold to the corporations?

"Mr. Dixon. No.

"Mr. Taylor of Colorado. You don't think there is any reason why your company should meddle in the Government's litigation when you get out of it yourself and have your own title quieted?

"Mr. Dixon. On the contrary, there is every reason why we should not interfere at all. It would not be any

of our business in any way. We certainly could not help either side if we were out of the case. We do not claim to have any influence with the courts in Oregon or any other place, and there is every reason why we should desire that the railroads should sell their lands.

"Mr. Taylor of Colorado. Your object in intervening is so that you can get a decision one way or the other during this lifetime, and close it up as soon as possible?

"Mr. Dixon. Yes.

"Mr. Taylor of Colorado. You desire to expedite the matter rather than to wait the ultimate determination of the Government's litigation and then litigate it afterwards yourself?

"Mr. Dixon. Yes. The Deparment of Justice has stated to us that they will use every means in their power to keep us behind the railroad company. That is the main suit and that is their intention. The proposal has been made by Mr. Fisher, Secretary of the Interior, and I think he will suggest it to this committee, either in writing or in person, and that is, that this bill as proposed is all right, but that the amount stated in the bill should be left discretionary with his department, or the Department of Justice, or some one else. Now, after I stated the conditions to him, his statement to me was that it was probable, or possible at least, that some of these parties would not have to pay anything, by reason of having developed the property, and others, perhaps, should pay more. Then he asked my judgment of what

the value of the land was.

"The Chairman. I think the committee would like to hear from Mr. Fisher on that subject first.

"Mr. Dixon. I want to answer him now, because I will not have an opportunity afterwards. We disagree with him on that proposition. We take the position that these values should not be left discretionary with any one, and that there should be no consideration of the present value of the land, for the reason that whatever development and whatever values these lands have now we have made and created and we do not want to have to pay for it the second time. These lands have their values because we have built railroads over them, because we have bought the even-numbered sections, and gotten them together in one body and have developed them, and we do not think it is a fair thing to have to pay for the values which we have helped to create. We do not want to leave it to the discretion of the Department of the Interior, or whoever else may be designated, and, as I stated to Mr. Fisher, we would prefer to deal with the delay of the law, that we know something about, to dealing with his department or any other department that would not say what it was ready to do. We think it is a matter of present knowledge and within the province of Congress. We think our equities are strong enough to say that we should be relieved now.

"Mr. Raker. There is one more question I would like to ask Mr. Dixon. Your idea in intervening would be to expedite the suits?

Mr. Dixon. Our suits; yes.

"Mr. Raker. You have consulted with your counsel and they have advised you that an intervention in the main railroad suit would tend to expedite the trial of that suit and bring it to an earlier hearing?

"Mr. Dixon. Which suit?

"Mr. Raker. The main suit commenced by the Government against the railroad company.

"Mr. Dixon. No; they say that it will expedite our suit, not the railroad suit. I assume that that will be fixed by the court and tried when the court is ready. The Department of Justice has stated that they would, if possible, keep us behind the railroad company, and our idea in intervening is that we will get on all fours with the railroad company in point of time. We will be in court when they are, in place of being an indefinite time behind them. That is the only purpose of our intervention.

"The Chairman. I believe Mr. Lafferty wants to be heard on this matter.

"Mr. Mondell. I would like to make this suggestion: It occurs to me that it might be helpful to the committee if Mr. Dixon would file on behalf of his company a statement of their principal improvements. That is a matter that we might want to go into, particularly the number of miles of railroad constructed, the number of miles of wagon road constructed, and the approximate cost of them.

"Mr. Dixon. I have sent to me every month our monthly trial balances, and I could furnish them very readily.

"Mr. Taylor of Colorado. No, we want the number of miles of railroad that you have built to penetrate your woodlands, and the number of miles of wagon road, and the cost of those roads.

"Mr. Dixon. I can give you that today or any time —the number of miles of railroads and wagon roads and the number of mill sites.

"The Chairman. Will you attach that to your remarks?

"Mr. Dixon. Yes.

"Mr. Taylor of Colorado. It is your opinion, in regard to this last question that has just been raised, that the present values of the lands depend upon the improvements that have been made, and it is your opinion that the people you represent are entitled to that value rather than the Government of the United States?

"Mr. Dixon. Yes, sir.

"The following is a statement of the railroads, wagon roads, etc., constructed by the Booth-Kelly Lumber Co. upon its lands in Oregon:

"The Booth-Kelly Lumber Co. has constructed and has in operation between 7 and 8 miles of logging railroad and has partly constructed 4½ miles more. The cost of the railroad in operation and that which is almost completed has been $341,000, this cost including equip-

ment. The committee will be able to judge from this statement that the country through which this road is built is anything but level agricultural country. The fact is, the road was very difficult to build on account of rock and the steep hillsides which were encountered.

"The grant lands for which we have been sued, approximating 74,000 acres, cost us $572,000. Our four sawmill plants cost $693,000. Logging property, such as donkey engines and rigging of all kinds, cost us $117,000. Dams and improvements in the rivers, not included in any of the above, cost $32,000. We have paid, all told, since beginning operation, in taxes, $223,000. We have paid out for fire patrol on our own lands $9,000. I might say in this connection we have organized and have charge of a patrol covering the timber lands belonging to about 70 different corporations and individuals—mostly individuals—all of whom contribute pro rata to the expense, and the total of the money we have paid out for fire patrol is several times the amount paid on our own land.

"As to wagon roads, we have approximately ten miles. The small amount of acreage is accounted for by the fact that wagon roads are only built into the edge of the timber, the roads from the edge of the timber in being what are called 'chutes' or pole roads, upon which logs are hauled. Of these, we have built for a number of years past an average of 4 or 5 miles per year, at a cost of twenty to thirty thousand dollars per year; but these roads are worthless as soon as the logs are out, and are not to be considered as permanent improvements.

"In addition to the actual expenditures made as above, our estimate of the cost of finishing the line already graded and under construction is $46,000. This is for the balance of the steel, the building of bridges and culverts, and the laying of sidetracks on grade already constructed.

"In addition to all this we have made permanent surveys and are ready to begin work on an additional piece of road approximately 12 miles in length, which will cost, according to our engineers' estimates, $203,000. All of this work will have to be done to provide for the next five years' logging and is a very small proportion indeed of the total which will be required to work out all of our holdings.

"Figures given above are only for the improvements and operations of the Booth-Kelly Lumber Co.; a number of the other defendants in these cases have railroads and improvements approximating if not equaling those of my company.

"Our mills alone have furnished the entire pay roll and support for the towns of Saginaw, population about 300; Wendling, population about 800; Coburg, population about 700; and has been the principal pay roll in Springfield, population about 1,800. The mills of the other defendants are likewise situated in regard to the towns of Leona, Cottage Grove, Mill City, Falls City, Dallas, Salem, and a number of other smaller towns.

"A number of improvements contemplated by my own company and other companies interested have been

held up on account of this litigation, and if the suits are compromised the development will go ahead again to a remarkable extent.

"Respectfully submitted,

"A. C. DIXON."

Whereupon the attention of witness was called to "A Statement of the railroads, wagon roads, etc., constructed by the Booth-Kelly Lumber Company upon its lands in Oregon," set out on page 66 of this statement, purporting to state the number of acres of land which the Booth-Kelly Lumber Company owned involved in these "Innocent Purchaser Suits," the cost of the four sawmills and other property, taxes paid, etc., and other facts, and stated that he made up the statement himself from the books and reports of the Booth-Kelly Lumber Company and he thinks it is correct.

Whereupon the attention of witness was called to a document with "Report No. 1008, House of Representatives, 62d Congress, 2nd Session. Oregon and California Railroad Land Grant. July 16, 1912.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed. Mr. Robinson, from the Committee on the Public Lands, submitted the following Report. (To accompany H. R. 22002.)" and witness stated that he had seen that document before and had a copy of it, and that he had seen H. R. 22002 accompanying that report.

Whereupon defendants offered in evidence as one

exhibit these two documents, which were received in evidence marked "Defendants' Exhibit 334," and is hereinafter set out and described and made a part of this statement of the evidence and identified as such.

Whereupon the attention of witness was called to a statement or letter of his, of date April 10, 1912, appearing at pages 36, 37, 38, 39, 40, 41 and 42, inclusive, of a publication called "Suits in Oregon Hearing Before the Committee on Public Lands, United States Senate, Sixty-second Congress, Second Session, on S. 5885. A Bill Supplementing the Joint Resolution of Congress Approved April 30, 1908, entitled 'Joint Resolution Instructing the Attorney General to Institute Certain Suits, and so forth.' April 24, 1912. Printed for the use of the Committee on Public Lands, Washington Government Printing Office, 1912," and particularly page 40 of that statement, which reads:

"The lands in our possession are practically all such as are not capable of cultivation until after the timber is removed and the stumps cleared from the land, and then a major portion will only be useful for purpose of reforestation. These lands never could have been put into the hands of actual settlers and actually settled upon, for the reason that a settler could not make a living on 160 acres or any other number of acres of these lands. We have used them in developing the country in the only way in which they could have been used, and in this use we have spent millions of dollars in building railroads, developing the streams, and building sawmills,

and are now furnishing employment to thousands of men, my own company having employed at the time the resolution of April 30, 1908, was passed in the neighborhood of 1,000 men, and our company was in process of development, so that within a few years we would have been employing from three to five thousand men—very many more than the number of men that could have been provided with 160 acres each from the lands in question. Employees in our mills and camps receive good wages, the minimum being $12 per week at the mills and the average wage in our logging camp $16.50 to $17.50 per week. The provident among these men have homes in these mill towns, and some of them own small farms elsewhere, which they cultivate during a portion of the year, and the average are much better off and in better financial position than they could possibly have been had they settled upon these lands as contemplated in the act."

Whereupon complainant renewed the same objections made heretofore to the testimony of this witness with reference to statements made before the Committee of the House.

Whereupon witness stated that he wrote that statement and delivered it to the President and that the statement is true except as to the particular he mentioned a little while ago. He overlooked the statement as to pasturage. He should have said that after these lands were logged off they would be useful only for reforestation or pasturage. That he thinks the state-

ment, "These lands never could have been put into the hands of actual settlers and actually settled upon, for the reason that a settler could not make a living on 160 acres or any other number of acres of these lands," is true.

Whereupon defendants offered in evidence that portion of this letter, to which the complainant made the same objection to this statement as herein heretofore set out, which said portion of said letter so offered in evidence is as follows:

"The Chairman. The following letter addressed to the President by Mr. A. C. Dixon and submitted to the committee in lieu of an oral hearing will be printed as a part of the hearing:

"Washington, D. C., April 10, 1912.

"The President.

"Sir: In compliance with your request that I put in writing my statements to you of Friday last, with reference to S. 5885 and H. R. 22002, these two bills being identical in form, allow me to say that I am not an attorney, so this statement will necessarily be only that of a business man, and therefore will not attempt to deal in legal terms or in such other phases of the matter as might be covered by the Attorney General, who, I understand, will furnish you with an opinion on the bills. I am representing, primarily, the Booth-Kelly Lumber Co., but at the same time am representing the owners of at least 90 per cent of the lands covered by 45 separate suits brought by the United States against pur-

chasers of what are known as Oregon & California grant lands."

(Portion of letter referred to.)

"The lands in our possession are practically all such as are not capable of cultivation until after the timber is removed and the stumps cleared from the land, and then a major portion will only be useful for purpose of reforestation. These lands never could have been put into the hands of actual settlers and actually settled upon, for the reason that a settler could not make a living on 160 acres or any other number of acres of these lands. We have used them in developing the country in the only way in which they could have been used, and in this use we have spent millions of dollars in building railroads, developing the streams, and building sawmills, and are now furnishing employment to thousands of men, my own company having employed at the time the resolution of April 30, 1908, was passed in the neighborhood of 1,000 men, and our company was in process of development, so that within a few years we would have been employing from three to five thousand men—very many more than the number of men that could have been provided with 160 acres each from the lands in question. Employees in our mills and camps receive good wages, the minimum being $12 per week at the mills and the average wage in our logging camp $16.50 to $17.50 per week. The provident among these men have homes in these mill towns, and some of them own small farms elsewhere, which they cultivate during a portion of the

year, and the average are much better off and in better financial position than they could possibly have been had they settled upon these lands as contemplated in the act."

Whereupon witness being shown "Defendants' Exhibit 335," being a map issued by the "Department of the Interior, General Land Office, Fred Dennett, Commissioner," said that he thinks the map is what it purports to be.

Whereupon defendants offered said map in evidence as "Defendants' Exhibit 335" and the same was so received and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon witness upon cross-examination further testified that he, with certain other representatives of the large purchasers of these railroad lands, appeared in the early part of the year 1908 before the Public Lands Committee of the House with reference to Senate Joint Resolution No. 48, which afterwards became effective by passage and approval April 30, 1908, for the purpose of urging an amendment to the resolution which would confirm the titles of the purchasers, and that after the failure to secure such an amendment they endeavored by what they considered legitimate means to defeat the resolution itself. The effort was to try to get the resolution amended on final passage, or if they could not have it amended to have it defeated. It is not true that they in any way assisted the Government in

securing the passage of that resolution to authorize the institution of this suit. His reasons were not the only reasons and arguments presented to the two committees of Congress and which were considered by these committees in passing upon these bills. There were other reasons than those contained in his statement which were presented to the Committees of Congress during the consideration of these two bills during the above session which finally became enacted into law with some amendments as the act of August 20, 1912. The question as to whether compromise would be authorized or not was the main question that he heard discussed and was the only one he was interested in. He was not connected with the Booth-Kelly Lumber Company during the time that it made all of its purchases referred to by Mr. Booth in his testimony, but was with the company when it purchased, he would say, half of them or more. The railroad company, in making all the sales of that land, so far as it came within his observation, endeavored to get all they could for the land. The Booth-Kelly Lumber Company paid the market price, or a little above the market price at that time. As to the restrictions, he never had heard of them at the time the Booth-Kelly Lumber Company purchased the lands. He knew nothing of that. The Booth-Kelly Lumber Company paid the railroad company more than it had to pay for the intervening even-numbered sections. No one representing the railroad company ever informed any members of his company, so far as he knows, of these restrictions, or gave them any warning as to the nature of the title

that they were buying. He is quite sure they did not, and this was another reason that was submitted to the two committees in Congress upon the question of the equitable claim of these purchasers to a compromise as proposed by the act of August 20, 1912. In the deeds made by the railroad company to the Booth-Kelly Lumber Company there is no assurance or warranty of title. His understanding is that these deeds are legally termed bargain and sale deeds. There is no warranty, at least, in the deeds. One of the matters discussed during this time and presented to both committees as to this proposed legislation which finally became the act of August 20, 1912, was that the railroad company had sold these lands to purchasers for the highest market price, and no disclosure was made as to the restrictions upon the sale of the lands contained in the granting acts, and had given deeds without warranties, which left the purchasers without remedy if the Government should enforce a forfeiture against the purchasers. The refusal of the railroad company to sell its lands further arrested that part of the development that was dependent upon the operations on timber lands, and if the sale of these lands in that manner contributed to the development of Oregon, the refusal to sell them in that manner necessarily arrested the development of Oregon and in his opinion it could not be true that the railroad company has kept within the spirit or reason of these acts of Congress by first selling the lands in large quantities to mill operators and afterwards refusing to sell them at all. He has heard all of the testimony of Mr. Booth

as to the availability of this land for grazing and other agricultural purposes and thinks that his testimony is generally correct upon these questions. It is true that the more the settler could get for timber on the lands, the more money he would have for development purposes, but he does not think the value of the timber would have anything to do with the settlement. If the settler could sell the timber on these timber lands it would certainly have the effect to help rather than retard the settler. He does not think the value of the timber would have any bearing on his testimony in regard to the use of the lands for dairying or other agricultural purposes. Solid bodies of timber lands, in a general way, are essential to practical milling; the removal of the timber is also essential to any subsequent use of the lands in this vicinity for grazing or other agricultural use, referring now to lands that have heavy growth of timber upon them. It is true that if the railroad company should withhold permanently the alternate odd numbered sections in this timbered region involved in this suit, particularly in these localities with which he is personally acquainted, the necessary effect of that would be to prevent logging off the lands and prevent their ultimate subjection to grazing or other agricultural use, such of them as are adapted to that use. The railroad company controls practically all transportation facilities from Eugene south to the southern boundary line of the State, that is, with reference to the territory within the exterior boundary lines of the railroad grant, and has controlled it since the railroad was

constructed. The meetings referred to in his testimony and that of Mr. Booth were called, as far as he knew, primarily to object to the advance in rates threatened in 1906, and to rates that were considered unfair and these protests in regard to the land grant developed at these meetings were the first that he heard. The principal complaint was against traffic matters, unfair and unjust rates, as they thought at that time at least, and the matter of withholding the lands from settlement, the matter of the Railroad Company building its own mills to saw their ties and other things of that character were also discussed, including witholding the lands from sale. The principal object of the meeting at Eugene so far as he knew of it and he was one of the Committee on Arrangements, was to discuss traffic matters. Personally he did not know of the resolution in regard to the sale of grant lands until about the time the meeting was called to order. There was no commercial or industrial reason at any time since he has known these lands, as to a majority of the lands, why these lands could not have been sold in tracts of 160 acres and at a price not exceeding $2.50 per acre. He would not speak as to all of these lands, because he does not know. The vast majority of them could have been sold at that price at any time since he has been connected with the lands, in 160 acre tracts. He is not thoroughly familiar with the Timber and Stone Act requirements, but these lands could have been sold to individuals, in his opinion, at any time that they had an opportunity. He does not think the Railroad Company had to charge more than

$2.50 an acre in order to develop the country. He would say that perhaps 55 or 60 per cent of the logged off lands of the Booth-Kelly Lumber Company have been logged off since the year 1905. There have been practically no sales made at all of land grant lands by the purchasers of such lands since this agitation concerning the limitations upon the sale of the lands by the Railroad Company, commenced in 1906. With reference to the limitations upon the sale by the Railroad Company of these lands, the Booth-Kelly Lumber Company has repeatedly refused to buy grant lands since 1906 and refused to sell these large bodies of timber. Including the holdings of the Booth-Kelly Lumber Company and their timber lands in that vicinity and for that matter the other timber within the exterior boundaries of this railroad grant consists almost all together of fir and pine. It takes a number of years for these trees of long growth to reach maturity. There would be no very great change in a period of 25 or 30 years, nothing that would be noticeable except to an expert or some one making a critical examination. The conditions are approximately the same in October, 1912, as they have been ever since he has been acquainted with the land, and from the age of the trees were in the same condition in 1912 as they were 30 or 40 years ago without more than a slight change in the growth of the trees.

Whereupon on re-direct examination witness further testified that rails have been laid by the Oregon Electric Railway and trains are now operating from Portland through to Eugene and the official completion of this

road to Eugene was in September 1912. He thinks there is also a railroad from Cottage Grove leading out into the foothills and mountains of the Cascades, a distance of 25 miles not owned by the Southern Pacific Company, or the Oregon and California Railroad Company which serves a lot of saw mills on that line and it is true that according to general repute as to ownership the Hill Lines have the Pacific & Eastern Railway Company, a line from Medford in the Rogue River Valley to Eagle Creek and up the Rogue River Valley on surveyed connection to what is called the Oregon Trunk, leading from a connection with the S. P. & S. Railway up the Columbia River and up the Des Chutes south to Bend and beyond. He understands there is about 25 miles of that road already built in Jackson County. He thinks it is true up to this date with very slight exceptions that the facilities for shipment of all lumber or timber on the water shed of the Coast mountains are by way of Marshfield and other ports on the Pacific Ocean.

Whereupon witness further testified as follows:

Q. Now, in your letter of April 10, 1912, to the President, referred to and submitted to the Committee on Public Lands of the United States Senate, as you have heretofore identified it, you have used this language: "Within the next several years a great deal of irritation was created in Oregon by reason of the refusal of the Oregon & California Company, or the Southern Pacific Company, to place a price on these lands or offer them for sale, and as a result of this irritation a number of commercial and other trade organizations adopted

resolutions condemning this course on the part of the Railroad Company, and asking that some steps be taken to compel them to dispose of the lands." Referring to that, and refreshing your memory from that statement, what is the fact in that respect. Is that correct?

A. That is a correct statement.

Whereupon witness further testified that he is not positive but thinks that Senator Mulit, State Senator of Jackson County at that time introduced the resolution before the meeting at Eugene in 1906 relating to the sale of these railroad lands, but he is not sure that he was the one who introduced the Memorial in the Legislature of 1907. It is his recollection that the resolution that Senator Mulit brought to the Eugene meeting was introduced and adopted at that meeting at Eugene. That resolution and all the others that he ever knew anything about were simply urging the Company to dispose of the lands. He never heard of the matter of forfeiture until 1908 when he was in Washington.

Whereupon witness further testified as follows:

"Q. That is to say, the demand of the public in these meetings that you attended or that you knew of, was that the company be required to dispose of the lands as they had heretofore disposed of them, for the purposes of use to those who had use for them?

A. I don't know as to the disposing of them as they were heretofore disposed of, but the general idea and desire, as I interpreted it, was to have them sold and disposed of at a reasonable price. I think there were a

great many thought they ought to be sold at $2.50 an acre, but a great many others didn't care."

Whereupon witness further testified that there was no particular desire, that he knew of, to have these timber lands sold to actual settlers. He never heard the idea advanced in the community that these lands could be utilized for actual settlement.

Whereupon the witness further testified as follows:

"Q. Would actual settlers have purchased these lands for actual settlement or for the timber that is on them?

A. I don't know how to answer that question. If they had been actual settlers they could not have been purchasing them for the timber that is on them. But if they had been purchased they would have been purchased for the timber that is on them.

Q. There occurred a protest in this case about actual settlers. We have some 7,000 in this record pretending, some of them, to have actually settled upon the best timber lands in the grant, and others to have applied for the very best timber-lands in the grant unsold, and for $2.50 an acre, in 160 acre tracts, and there have been some 7 or 8 applying for the same quarter section, according to the record. Now, would these lands have been purchased by men to settle on them, or for the timber, if they had been sold at $2.50 an acre?

Mr. Townsend: Objected to as incompetent, irrelevant and immaterial, and calling for a mere opinion of

the witness upon a matter that is not properly a subject of expert testimony, and the witness not being qualified to testify as to the intention of those settlers or their good faith or lack of good faith.

A. As far as the lands I am familiar with are concerned, they would have purchased them only for or chiefly for the value of the timber that is on them.

Q. You base that judgment upon the history of the disposition of the lands in the even sections of the same class, do you not, in part?

A. Largely, yes; the fact that I don't think they could do anything else with them, a big portion of them.

Q. You mean that they could only use them for the timber that is on them?

A. Until the timber was taken off.

Q. Their chief value, then, would be the timber?

A. I think so.

Whereupon on re-cross examination witness further testified that the first passenger or commercial train of the electric line went through to Eugene on the day this testimony was being taken, in September 1912. This line will not be used by the Booth-Kelly Lumber Company in the shipment of any of its lumber until or unless it is extended from where it is now. The electric lines have not, to his knowledge been used to any great extent for transportation of lumber, not in any quantities of consequence in any other part of the road where timber is being milled, nor does he know of its being transported

by means of electric lines, and he doubts whether that electric line will ever seriously compete with the Southern Pacific Company in the transportation of lumber or logs. The line from Cottage Grove to the Cascade Mountains is built and owned by eastern people and Mr. Hengen not by some of the mill men and does very little business other than transportation of lumber and logs principally which are transported to the Southern Pacific lines from the mills, from a point on the western slope of the Cascades, or in the foothills of the Cascades to Cottage Grove. In the immediate vicinity of Cottage Grove there are some twenty lumber mills and Cottage Grove does not buy the lumber transported over this other railroad, and that lumber must still be transported over the Southern Pacific to some other market. The line from Medford, which is constructed for a distance of about 25 miles, is up towards the Crater Lake country, Elk Creek. It is his understanding that the Hill Lines have constructed from a point four or five miles east of The Dalles, only on the opposite side of the river, connecting with the North Bank road southerly across the Columbia River by means of a bridge and then up the Des Chutes River, for the distance of about 150 miles, so there is a break between Bend, which is the southern terminus of the Hill line constructed from the north and the northern terminus of the Hill line that has been constructed from Medford of something over 100 miles—he does not know the exact distance. The Hill line as constructed and projected lies almost wholly east of the Cascades and it would not, under the present mile-

age that is built in the western part of the State be available for transportation purposes to the industrial plants or to the purchasers generally within the limits of this grant, from Eugene southerly to a point at least as far as Grants Pass or farther. He supposes it might be covered, but it could not be reached from the lines the Hill people now have or have projected as far as he knows anything of.

Whereupon complainant objected to all that part of the testimony of the witnesses Booth and Dixon inconsistent with the testimony of the witness Charles W. Eberlein upon the ground that the same was incompetent, irrelevant and immaterial and inadmissible because an attempt on the part of defense to impeach the testimony of one of its own witnesses. Whereupon complainant moved to strike out such testimony on the same grounds and it was stipulated that this objection and motion should be treated as if interposed to each question of each of the witnesses Booth and Dixon.

Whereupon F. A. ELLIOTT, called as a witness on behalf of defendants and being duly sworn, testified that he is 47 years of age, born in Illinois, resides at Salem, Oregon, and is State Forester. He has resided in Oregon since December 1888 and was appointed State Forester in April 1911 by the State Board of Forestry, composed of the Governor of the State of Oregon, and six other members, one of whom is George W. Peavy, head of the Forestry School at the Oregon Agricultural College, George H. Cecil, District Forester and four members appointed by the Governor, one

from the State Grange, one from the State Woolgrowers' Association and two from the Lumbermen's Association. He is now State Forester and is required, by virtue of his office, to make annual reports to the Governor. His duties are outlined in the law creating the State Board of Forestry. He has general supervision over the fire patrol of the State, including lands owned by private individuals and lands owned by the State and associations formed for fire protection. He made his first annual report to the Governor as State Forester December 1, 1911. His second annual report had not yet been published. "Defendants' Exhibit 360" is his first annual report as State Forester to the Governor for 1911, published by the State in 1912.

Whereupon defendants offered in evidence said "Defendants' Exhibit 360" to which complainant objected as incompetent, irrelevant and immaterial and hearsay and conclusions of the witness, which said exhibit was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Whereupon witness further testified that the statements made by him in that report are as nearly accurate as they have any way of getting at it, to which last named testimony complainant objected as last above and as not a proper method of eliciting facts within the knowledge of witness.

Whereupon witness further testified that he was employed by the Oregon and California Railroad Com-

pany in its Land Department beginning in the latter part of April, 1889 and continuing until May 1st, 1906. His duties while in such employment from 1890 until about 1896 or 1897 were that he was assistant land examiner and assisted in cruising and classifying the lands being sold at that time belonging to the Oregon and California Railroad Company, granted to it by the Act of Congress of July 25, 1866 and May 4, 1870. After about that date, he was the chief land examiner of the Company and in that capacity did about the same kind of work, excepting that he had charge of all the field work for the Company after that. He went on the lands and cruised them in 40 acre tracts. A great deal of this work he did himself and a great deal he had done by other parties under his supervision. He understands that the reports which he made as cruiser or which were made under his supervision while he was in charge, prior to April 18, 1906, were practically all burned in the San Francisco fire. He made written reports of lands that he cruised, to Land Agent Andrews and later, to Eberlein, and thinks this form of report was gotten up by Rees and himself. These forms of reports are all substantially the same. Prior to the fire the Company used a book with four pages to a section, giving room for a quarter section, then a 40 in this quarter and on the opposite page, form for the report. These books were probably 4x8 inches in size in blank and were bound and had enough pages to hold a township. When the book was filled it was turned over to the Land Agent and kept on file in the office. He does not think any one of

the reports was saved. Referring to "Defendants' Exhibit 259," witness testified that he cruised a great deal of the lands in all the different counties in which the land lies shown in this exhibit, unless it may be Curry County. He does not know that he ever cruised any in Curry County, but in the other counties, he has done a great deal of cruising, probably has been over as many different 40-acre tracts as any one else in the country. They used to have a classification of these lands, as timber, agricultural and grazing. The character of the land in general, is rough and mountainous; that is the land itself. These three classes were on these blanks and also had two classes when the lands were denuded of the timber, that is, they were called either grazing or agricultural land, when denuded.

To which complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be considered as taken to all the testimony of the witness relating to the character of the lands within the limits of the grant involved in this suit, settlements thereon and public land entries thereof, and it was agreed between the parties that this same objection shall be deemed taken to all the testimony of this witness on that subject.

Whereupon witness further testified that all lands that were considered unfit for cultivation were designated as grazing lands when denuded. Taking southern Oregon, beginning with Douglas County, there is a great deal of land, among the unsold portion, that is

barren, rocky or covered with chaparral or brush, practically worthless for any purpose, that was classed as grazing land, simply because it was of no value for anything else. It has more or less brush, chaparral and all kinds of brush on the land and is rocky, very rough land. There is more or less of that scattered all through the grant, back in the mountains and foothills. He presumes Douglas County has more than any other kind of this character, of worthless land, because there is more railroad land in Douglas County. Josephine County would probably have a higher percentage of that kind of land than any other county. Off hand he would say that 40 per cent of the lands in Jackson and Douglas Counties would be worthless. The heaviest and most valuable timber lands of the grants, are in parts of Columbia, Washington, Multnomah, Clackamas, Yamhill, Polk, Benton, Linn, Lane and Douglas Counties. There are tracts of pretty good timber in Jackson and Josephine Counties, also in Lincoln County. Coos County is a very heavily timbered County. The comparative stand of timber on the unsold lands, compares favorably with the timber on the even sections, and with the timber in western Washington and in other parts of the world. It is just about an average of the timber in this State, with the exception that some of the very heaviest bodies of railroad lands have been sold. Generally speaking, he is familiar with these lands conveyed to the so-called innocent purchasers by the Company, aggregating something over 400,000 acres and they are the choice selected timber lands of the grant, up to the time these sales

were made. There is a great deal of timber land in the grant which is left, that is substantially the same but at the time these sales were made, the land that was sold was more accessible. The remaining lands now probably would not run quite as good in the stand of timber, but these lands are becoming more accessible all the time, and at the present time (1912), these unsold lands would be practically of the same quality of timber.

Whereupon witness further testified as follows:

"Q. What, from your knowledge of the timber-lands of this company, both those now owned, and those heretofore owned and sold to these innocent purchasers, and from your knowledge of the timber-lands on the even sections in western Oregon, within the limits of this grant, and coterminous with the unsold portion, has been the highest market price paid for any particular body of this timber-land, quarter section or otherwise, where the sale was a bona fide sale, made in due course, the seller selling because he wanted to sell, didn't have to, the purchaser buying because he wanted to buy and was able to buy? What is the best price for any quarter section that you know of that has been paid?

A. Well, the best price that I absolutely know of was $10,000.

Q. Where was that situated?

A. That was in Lincoln County. I am not right sure—I will have to look at that map to see whether that is within the grant either. It may not be. No, it is not. No, this is outside of the grant.

Q. How far away from the exterior limits of the grant on the west?

A. About four miles. Now, let's see, just wait a minute. Well, I know of a claim, this claim I say that I know of, I had an interest in that claim. I know of that being sold for $10,000. But there are claims just to the east of that in Polk County, that was in 8—9, well, I don't know positively but I know of sales being reported in there at $8,000 to $10,000.

Q. What is the fair market value of these best quarter sections, depending upon accessibility or availability, nearness to logging streams or rail transportation, of the best unsold quarter sections of timber-lands of the company? What is the fair market value of those quarter sections?

A. The timbered sections of the grant?

Q. Yes.

A. Well, I presume it would be safe to say $3,000 anyway.

Q. On an average?

A. On an average, yes, sir.

Q. And what would be the best maximum price, in your judgment, of the best quarter sections?

A. Oh, $10,000. There are claims that I could pick out that I know would sell for that.

Whereupon witness further testified that he does not know just where the claims of the Lafferty defendants

so-called, John L. Snyder and about sixty-seven or sixty-eight others are located, but knows all granted lands in Columbia County quite well and has cruised quite a good deal of it. These lands are generally very heavy timber, of the rough mountainous country and he would think these quarter sections in this best timbered area would very easily average anyway $3,000 or $4,000. Some of them no doubt would bring a good deal more, but he does not know where these claims are located and has not been in there since they were located.

Whereupon witness further testified as follows:

"Q. Now, taking this grant in its entirety, and based upon your knowledge of the same, obtained by cruising that which you have cruised, and by examinations made by you as an examiner, and other means of ascertaining the character of the land in person, by traveling over the same on its trails, from your knowledge obtained in your official capacity as State Forester, and having supervision of the fire patrol of the timberlands of the State of Oregon, including these and the lands in the even sections as well, and taking into consideration all the knowledge that you have of these lands that are unsold, involved in this suit, that are shown on this Defendants' Exhibit 259 in colors in green, I wish you would state to the Court what per cent of that grant in your judgment, is suitable for actual settlement for agricultural or horticultural or other such purposes?

Mr. Townsend: Objected to as incompetent, irrelevant and immaterial, in addition to the general objection urged as to this class of testimony upon the special

ground that it asks the witness to pass an opinion as to what constitutes actual settlement within the meaning of this law, and further, that there is nothing in the law requiring that the actual settler shall be wholly dependent for his livelihood upon the products of the land settled upon, and therefore calling for a conclusion and opinion of the witness upon a question of both fact and law.

A. What per cent of the land is agricultural land?

Q. Yes, that would be available for any agricultural or horticultural use.

A. Well, I should say from five to ten per cent.

Q. Now, suppose, Mr. Elliott, that the company had sold these lands, or would now sell these lands in this grant, and particularly the timbered portion thereof, and that portion which is chiefly valuable for timber, to these so-called actual settlers, at $2.50 an acre, in quantities not exceeding 160 acres, and give them a good title to each quarter section, and these purchasers or actual settlers, having this title to these timber-lands should desire to make the best investment that they could make, the best disposition or use of the land which they could, what would become of the title to these lands, in the ordinary course of business? Who would acquire these lands, and for what purposes could they be used, and would they be acquired, if you know?

Mr. Townsend: That is objected to, not only on the general grounds urged to all testimony relating to the character of lands, but particularly upon the ground

that it calls for a mere speculation or opinion of the witness as to what would become of the lands if the Railroad Company had obeyed the law, which is not a proper subject for expert opinion.

Q. You may answer.

A. What would these lands be purchased for? Was that the question?

Q. Yes.

A. They would be purchased for the timber, no doubt.

Q. What would become of the title to these lands? Where would the lands go shortly?

A. They would go into the large timber holdings. Of course, occasionally, a man might log a quarter section off himself, and keep the land, but it would be very seldom that that would happen.

Q. From your knowledge of the disposition of the lands in the even sections, coterminous with these, where title had been acquired under the Homestead Act or under the Timber and Stone Act, or other public laws of the United States, what has become of the lands in the even sections, where patents have been issued by the United States to these various parties, mainly?

A. It has very largely gone to large timber holders. Of course there are claims scattered all over the country that still belong to the original claimant.

Q. What is the chief value of these lands that have a value?

A. It is timber.

Q. Now, there has been some testimony in this case that some of these lands have been classified by the cruisers of the company as grazing lands, and especially after they have been denuded of the timber. What uses, if any, could these so-called grazing lands be put to, and in what way can they be said to be grazing lands, and what is the class of lands that you have classified as grazing lands, other than these worthless lands that you have spoken about already?

A. Well, the reason for classifying the lands as agricultural or grazing lands when they were denuded, was simply for the purpose of having a classification. Now, there was a time when we thought that all the land when it was denuded would either have to be used for agricultural or grazing purposes—That is all the uses we knew of for it. But under present conditions, and since the National Forests have been created, these lands largely, very largely, should be used for growing timber on.

Q. What do you mean by that?

A. It should be kept as permanent timber-land. Nearly all the lands in this grant are lands that should be used for growing timber.

Q. You mean reforestation?

A. Yes, resforestation.

Q. I will ask you to state whether or not these people who have logged off their lands, these large timber

owners, who have manufactured their timber, cut off their lands, have determined yet what to do with the logged off lands, if you know.

A. Very few of them have. Of course, there are some lands that they are clearing up, and putting into cultivation. Take along the Columbia River and places where it is susceptible of cultivation, they are using it. But otherwise it has generally grown up to young timber or brush, and not being used at all.

Whereupon witness further testified that it would take 50 to 75 years for second growth Douglas Fir to become saw timber from the time it is planted or seeded until it is merchantable. Reforestation of these timber lands after the timber has been once removed is impracticable under the present tax system, but he thinks the tax system should be changed so that it would be very practicable to reforest these cut over lands. The best use, in his judgment, to which the majority of these logged off lands could be put would be to grow more timber. These burnt over lands offer very little pasturage. He does not know how many acres it takes to keep a cow, but it takes quite a little and the main trouble is the young growth of timber or brush grows so fast that it chokes the grass out. There are places along the little creek bottoms where if they kept stock on it and kept the brush down very good grass grows, but taking the general run of the lands through the mountains, it grows up with brush and there is very little feed on it. The parcels of these lands suitable for some agricultural or horticultural purposes shown in the tabulated state-

ments, "Defendants' Exhibits 343 and 344" are generally in small patches, from an acre to a few acres, little creek bottoms or level benches, what are called bench lands, scattered all through.

Whereupon witness further testified as follows:

Q. Suppose that an actual settler, or person denominated as such in this record, should apply to the company for the purchase of a quarter section of this so-called grazing land, that is, land that is not chiefly valuable for timber, and the company should sell this quarter section to him, at the maximum price of $2.50 an acre, or less, and he should be expected to go out upon the property with his family, if he had one, support himself or his family by having this 160 acres enclosed, pasturing his stock on this 160 acres, if he has any stock, make his living for himself or his family, and a home there, what, in your judgment, would be his ability to do that?

Mr. Townsend: Objected to as purely speculative and argumentative, restricting the actual settler to a ridiculous life of inactivity and laziness, not contemplated by this statute.

A. Well, I don't know of any quarter sections, don't call to mind any, that I think a man could make a living on. In fact, I know of quite a number of places where 40 and 80 or 160 acres have sold a number of years ago, generally to fill out a piece of land, maybe a little fairly good land on this, to fill out a quarter section on Government land, for instance; but I don't call to mind now any quarter section that the company has

ever sold since I have been with them that a man has gone onto it and actually made a home, and made a living on that quarter section.

Q. Suppose that the company would sell one of these best quarter sections of timber-land to this so-called actual settler, at the maximum price of $2.50 an acre, and he should be expected to go out on this land to make a home for himself and his family, if he had one, what, in your judgment, would be his ability to make a living, for himself and his family on this timbered quarter section?

A. It would be impossible.

Whereupon witness further testified that there are very few, if any, entrymen who took homesteads within the limits of this grant on the even sections on the timbered area on the lands at the present time. They stayed on the lands long enough to get title to it and have abandoned it and their improvements have gone to rack lots of times, and generally you might say they have no improvements left on them. The improvements in the beginning were just make shifts as a general thing. Occasionally one would find a claim with pretty fair improvements, maybe 5 or 10 acres in a fair state of cultivation, but this is largely now grown up to brush. These lands in the timbered portions of the even sections thus homesteaded are now largely owned by large timber owners. To the best of his knowledge, he believes he has not worked for the Oregon and California Railroad Company any since May 1, 1906. He

worked some in California for Eberlein and McAllaster since 1906, on the other grants in California. He does not recall when he cruised the lands described in "Defendants' Exhibit 355" but thinks he did a little work for Rees sometime since 1906, possibly this is the work he did, but it had slipped his memory. This appears to be the only tabulated statement made from any cruisers reports made by him now in the possession of the Railroad Company. He cruised a great deal of these lands. He has no official or business relation with the Oregon and California Railroad Company or with the Southern Pacific Company or any of their affiliated or associated lines. He recognizes "Defendants' Exhibit 361" entitled "Professional Paper No. 4, Series H, Forestry 1, Department of the Interior, United States Geological Survey, Charles D. Walcott, Director, The Forests of Oregon, by Henry Gannett, Washington Government Printing Office 1902," and the map in the pocket entitled "Map of the State of Oregon showing the classification of lands and forests," as an official document and map issued by the Department of the Interior. This map has had quite a general distribution throughout the State. He has one of them. A. J. Johnson referred to was in the Forest Service of the United States, he thinks, but he does not know who he was.

Whereupon defendants offered "Defendants' Exhibit 361" in evidence to which complainant objected as incompetent, immaterial and irrelevant and as consisting of a mere statement of opinion of the compiler of

the document based upon information not under oath.

Whereupon "Defendants' Exhibit 361" was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Whereupon upon cross examination witness further testified that he is a witness under pay as an ordinary witness and has no other compensation, or promise of any other compensation.

Whereupon witness further testified as follows:

Q. You saw me in the summer of 1907 here at Portland in this very building, did you not?

A. I think I did.

Q. And you made a statement to me concerning the general subjects that you now have covered by your testimony, did you not?

A. I think so, yes.

Q. And as you gave me that statement, I dictated it to a stenographer, did I not?

A. You said you were having it dictated. Did you have it all dictated, all the conversation we had?

Q. I am asking you if you did not see me dictate it in your presence, did you not?

A. Well, I think you did, yes.

Q. You heard me, didn't you?

A. Yes, sir.

Q. And you saw the stenographer taking it down, didn't you?

A. Yes, sir.

Q. And it was transcribed on the typewriter and submitted to you before you left, was it not?

A. I don't think so.

Q. Will you swear that it was not?

A. I don't think it was.

Q. You swear that you never saw that statement after it was reduced to writing on the typewriter?

A. I don't think I ever did.

Q. You swear that you never read it over?

A. Well, I don't remember of reading it over.

Q. How many times did you visit my office with reference to those interviews?

A. Once, is all I ever remember of.

Q. Don't you remember that you visited it there once when it was dictated, and afterwards came back and saw the typewritten statement, after it was reduced to writing?

A. No, I don't remember that. I might have, but I don't remember it.

Q. I will ask you to examine this document, and state if that is not the statement as you made it to me at that time, and as I dictated it in your presence, and which was shown to you on the same day after it was reduced to writing?

A. I don't think I ever saw that in that form.

Q. I ask you to read it, and state whether you did not make the statements to me as set forth in that document, in the Postoffice Building in the City of Portland, in the State of Oregon, at about the month of August, 1907?

To which examination upon this subject defendants objected as incompetent and as not impeaching evidence or a proper method of attempting to impeach the witness as a narrative or purported narrative of a past conversation.

Whereupon witness further testified as follows:

A. What is the question you want me to answer now?

(Question read.)

A. I say that I did have a conversation with you, in which I made some of those assertions, but I don't think they are taken down as I gave them to you.

Q. I wish you would point out what portion of this statement does not correctly set forth the statement made to me by you at the time that I have indicated in my former question.

A. What is the question?

(Question read.)

A. Well, I might simply state that the conversation I had with you at that time was very largely the questions and answers were all made by yourself. I came in—you wrote to me once or twice to come down,

wrote me finally to come down at your expense, and I happened to be in town, and I came in to see you, and I began to give you a little history of my work with the company, and some of this is fairly accurate as to what I said. But it is very largely answers that you made out yourself to questions that you had already asked. You began with the assumption that, as I was not with the Railroad Company at the time, of course I had a grievance, and would open up and give you any information that I had. And furthermore, when I went on to state, and I see you have got portions of it here fairly accurate about the grades of the land—now, in cruising the land and grading it as agricultural and grazing lands, etc.,—you have that fairly accurate. But I remember very distinctly that as soon as I began to answer the questions and answering them in my own way, you began to answer them in your way, and asked me if that was not so and so, and to get out in a nice way with you, I let you answer to suit yourself, a great many of these questions.

Q. You have not played the same game here to-day, have you?

A. No, sir, I am under oath now. You told me at that time—you were very insistent on this—now, this is not under oath; this is just a general statement. Oh, there is a good many of these statements that are all right.

Q. Isn't it a fact, Mr. Elliott, that I told you that I was not in the affidavit getting business, and that I

did not care to take your affidavit, but that I wanted truthful information concerning the history of this grant, and your knowledge of it?

A. I don't know about that. I don't remember that detail.

Q. Do you mean to say that I kept cautioning you that you were not under oath for the purpose of getting you to state things that were false?

A. No, I did not say that.

Q. Did you say anything to me at that time that was false?

A. Not—no, I don't think I did.

Q. Well, do you say that in order to please me, when I asked you if things were so, that you agreed to them if you knew they were false?

A. Well, I say this: that you began with the assumption that I was going to give you a lot of information, and lots of information you tried to get out of me that I did not know anything about, but when you would ask a question, you would give the answer to it yourself, and I would let you go ahead and answer. Haven't you seen people that you would do that way with? I have, and you were one of them.

Q. That is your only explanation of that general statement, is it?

A. Yes, sir.

Q. That when you find anybody that wants you

to give certain answers, you will do it. will you?

A. Well, there are times when I will, yes.

Q. Why would you give it to me at that time?

A. Well, just because from the general way you began to ask the questions.

Q. Now, sir, is it not a fact that I discussed with you every statement that is made in that document, and having gotten from you your version of it, I then dictated it, sentence by sentence, to the stenographer, and turned to you and asked you if that was correct?

A. I don't think so. I don't remember that at all.

Q. Did I dictate that entire statement without asking you as to the character of the statement as I went along?

A. You dictated this from our conversation. We talked along, and you would turn and dictate to your stenographer.

Q. After I had discussed a given subject or question with you, I would then turn and dictate the substance of it to the stenographer, did I not?

A. Well, the substance as you interpreted it.

Q. Did you not agree to it at the time?

A. I don't think so, any more than I would say "Let it go at that."

Q. Do you swear that you ever used the expression "Let it go at that"?

A. No, I would not say that I did.

Q. Will you swear that you ever in any way indicated to me that anything I dictated to the stenographer was not absolutely true?

A. No, I would not.

Q. Did you sit there and deliberately let me dictate to that stenographer things that were not true?

A. Well, if this is what you dictated, I surely did, but I don't think this is what you dictated and read to me.

Q. I thought you said I did not read it to you.

A. Well, you say you did, though, and I say I do not think that if this is what you say you dictated and read to me, I do not think you ever did.

Q. Well, did I read anything to you at that time?

A. I don't think you did. I believe you just simply dictated to the stenographer and fixed this up afterwards. I don't think I ever saw that paper in that form. I am sure I never did. I don't think I was ever by you to me at that time.

Q. I want you to go ahead and answer my former question, and point out the portions of that document that you say do not correctly set forth statements made by you to me at that ime.

Mr. Fenton: Same objection as made before last above, that this would be an attempt to prove hearsay declarations of Mr. Andrews and other officers of the company, through the mouth of this witness, under the pretense of impeaching the witness, and it is therefore

incompetent.

A. Well, now, here is a statement here now, it says, "From Mr. Elliot's conversation, it is certain that Mr. Andrews, and those conducting the land business for the company, understood about the Act of 1869 which limited sales to actual settlers in limited quantities and for a limited price." Now, you don't say that I said those things, but you say from the conversation it is certain.

Q. Well, did you not, in substance, tell me that Mr. Andrews and the other persons named there did know about——

A. I don't think I ever did.

Q. Let me finish my question, please.

A. Well, go ahead.

Q. Did know about the restrictions of the grant.

A. I don't think I did.

Q. Well, go on with the next portion of that statement that you deny having made to me at that time.

A. Here is another one. "It is apparent that Andrews and Mills understood this point, and that they endeavored to dispose of as much of the land as they could before they were stopped, commencing about 1892, because as soon as there became a brisk demand for timber-lands, the policy of the company seemed to change from trying to dispose of agricultural lands to that of making a special effort to find purchasers for timber-lands, and the timber-land sales were exploited

thoroughly."

Q. Do you deny having made that statement to me?

A. You do not say here that I made it. You say "it is apparent from the conversation."

Q. I ask you the question, do you deny having made that statement, in substance, to me at that time?

A. Yes, I do. I do. Here is another statement: "Mr. Elliott thinks that in time fully 50 per cent of all the lands now held by the railroad company will be valuable chiefly for the growing of fruit, vegetables and other farm products." I do not think I made that statement.

Mr. Fenton: What is the answer?

A. I say in here it says: "Mr. Elliott thinks that in time fully 50 per cent of all the lands now held by the railroad company will be valuable chiefly for the growing of fruit, vegetables and other farm products." I do not think I ever made such a statement.

Q. Well, do you deny that you made that statement?

A. Yes, I do.

Q. You swear positively, do you, that you did not make that statement, in substance, as set forth in the document which you now hold, and which you have read?

A. I do.

Q. At the time that I have stated, that is, at about

the month of August, 1907, and in the old Grand Jury room of the Post Office Building of the United States, in the City of Portland, in the State of Oregon, you deny having made that statement to me, do you?

A. I do. And I will tell you, I will make a little explanation of that. I do remember you asking me the question about what per cent of the lands were agricultural, in the grant as now held by the company, and I said that there was none of it, practically none of it, from the fact that the agricultural lands were taken up before the company got their grant, and that prior to this time the company had sold to actual settlers, wherever they had any improvements on the land, or wanted to buy a small portion of land adjoining their holdings, they had bought it up, and at the present time there was practically no agricultural land in the district, in their grant, although I said that there was occasionally a patch all through these large timber holdings, that might be considered as agricultural land—small portions—and also that there was quite a proportion of it that was only valuable for grazing lands. Then you made the broad interpretation of agricultural lands as including these grazing lands. Now, you said, "Supposing that you call agricultural land what you call grazing lands—grazing is a department of agriculture, that comes under the head of agricultural."

Q. I said that to you, did I?

A. You said that to me.

Q. You remember that distinctly, do you?

A. I remember that.

Q. And you swear to it now, do you?

A. I do, yes, sir, I swear to it. And I said, "Well, that would make quite a difference, because there is a great portion of it that has always been considered as only valuable for grazing lands." But as to saying that even that portion would amount to 50 per cent, taking the grazing and agricultural lands together, I might possibly have made that assertion. But I think it is pretty large. This next statement here: "Mr. Elliott thinks that there were quite a number of instances where people had actually settled on railroad land, and wanted to buy the land for agricultural use, but were too poor to pay the price which the company demands, and were, for that reason, prevented from acquiring the land. In these instances, the price was very much in excess of $2.50 per acre." Now, I am positive I never made any such assertion as that. But I did tell you that wherever there was an actual settler on the land, the Railroad Company had always, so far as my knowledge was concerned, refused to sell that land to any one else but the actual settler, and in very many cases, where it was just simply a forty acres adjoining their homestead, if they had a little fence on it, a little piece of it in cultivation or fenced in as pasture, wherever that came to our knowledge, the Railroad Company refused to sell that to any one but the actual settler.

Q. The question is do you swear that you did not

make the statement you have read as set forth in that document?

A. I do. I say that I did not make that statement. (Hands back statement to counsel.)

Q. Is there any other portion of this statement that you deny having made to me at the time and place that I have indicated?

A. Well, there are several little places in there where I don't think I made it just exactly. I think you have given it a different interpretation from what I did.

Q. I want those pointed out. That is what I asked you to read it over for.

A. All right, sir. I will do that. Now, this statement here, Mr. Townsend. I don't know just what—it says. "The general instructions with reference to cruising were substantially the same during the entire time Mr. Elliott worked for the company." This statement here, now, "but the use to be made of the cruising apparently changed as the demand for timberlands increased." I don't know what could be meant by that, and I don't know why, if I did make such a statement, I don't know why it should be made. "But the use to be made"—because the use of these cruises was always the same. It does not make any difference what they were looking for, whether they were looking for agricultural lands, or what they were looking for, the actual cruise of the lands, you know, was made for the purpose of classifying and appraising the lands; always was

that; and I don't know why that statement should be made in there, "but the use to be made of the cruising apparently changed as the demand for timber-lands increased." The use of it—I surely would not make such a statement as that, because the purpose of all these cruises was to ascertain the character and the value of the land.

Q. Do you deny having made that statement to me at that time and place that I have indicated in my former question?

A. Why, yes, I do, because the use of these cruises has always been for the same purpose. I surely never would make an assertion like that. Now, "The efforts to sell were to meet the condition then existing, which was that sales could be made to none except those who wished the land for agricultural or grazing use." I probably made that assertion there, but that was not to intimate that the company could not sell for anything but that, but that there was no sale for anything but agricultural or grazing use.

Q. I am not asking you to explain any of these statements made in there, but I am asking you whether you made them.

A. Well, I probably made that one, yes. I think that is about all that I would say.

Q. With the exceptions that you have noted, is it not a fact that you did at the time and place that I have mentioned make the statements set forth in this document?

A. I probably did, in substance, as you have it there.

Whereupon complainant offered in evidence as a part of the cross examination of witness the document last referred to in his examination as "Government's Exhibit 122" to which defendants objected upon the ground that it is a narrative or purported narrative based upon an alleged conversation between witness and Mr. Townsend and contains attempted or purported conclusions of Mr. Townsend from the conversation with the witness and is hearsay and not impeaching testimony and the document is unsigned and not a statement of the witness but the statement of counsel based upon his understanding of what witness may have said and is therefore incompetent, irrelevant and immaterial.

Whereupon defendants also moved to strike out said document for the same reasons which said "Government's Exhibit 122" was received in evidence and is as follows:

"GOVERNMENT'S EXHIBIT 122.

"INFORMATION RECEIVED FROM F. A. ELLIOTT.

"Mr. Elliott now lives at Newberg, Oregon. In the fall of 1888, he came from Illinois to Oregon, and in the spring of 1889 was employed as a member of the cruising staff of Mr. N. E. Britt, who was the chief land examiner of the Ore. & Cal. R. R. Co. Mr. Elliott commenced work in May, 1889. Just before starting out upon the cruise, Mr. Elliott overheard a conversa-

tion between Britt and Mr. Andrews, the acting land agent, and Mr. Andrews said, in substance, that he hoped Britt would find a lot of agricultural and grazing lands this trip, to which Britt replied that he hoped he would find a lot of good timber land, the same as he did the year before.

"Mr. Britt had been in charge of a cruise conducted by the railroad company the preceding year, the work being done in the Mohawk Valley, in Lane and Linn counties, in the viciniity of the Cascades. From information then and afterwards received, Mr. Elliott learned that the first general cruising done by the company was commenced in 1888. Prior to that time, what cruising had been done was for the purpose of individual sales.

"Mr. Elliott continued in the service of the railroad company from May, 1889 until May 1, 1907. The first two years Elliott worked as compass man with one of the crews. Then he became an estimator, and worked in that capacity with others for about seven years, when he became chief cruiser, in which capacity he served the company for the last nine years of his service. During the course of his employment, Mr. Eliott visited every portion of the grant, and there are but few townships which he has not examined in whole or in part.

"The general instructions with reference to cruising were substantially the same during the entire time Mr. Elliott worked for the company, but the use to be made of the cruising apparently changed as the demand for timber lands increased. When Mr. Elliott first started to work, there was practically no demand for

timber lands. Speculation in any of the lands was very rare. The efforts to sell were to meet the condition then existing, which was that sales could be made to none except those who wished the land for agricultural or grazing use. The theory of Mr. Andrews seemed to be that the company's principal chance of selling the land was to settlers who desired to cultivate it, or use it for grazing purposes.

"The general plan of the cruising was to ascertain first whether the land was timber land or not, and if timber land, whether the land was valuable for agriculture or grazing after the timber was removed. The same report was made with reference to the lands which had no timber. Agricultural lands were graded No. 1, 2 and 3, and grazing lands had the same grades. The theory of Mr. Andrews, as quite frequently expressed, was to find large tracts available for agricultural use and then induce settlement of large colonies, and disposing of the land to the members of the colonies. The lands were cruised with this purpose in view until the demand for timber began. This was in about 1892.

"Down to that time, there had been practically no demand for timber land for the timber itself. But the demand for timber land increased quite rapidly from 1892, and within the course of five or six years, there was a very heavy demand for timber lands by mill men and by lumber men, generally for speculation, as well as for actual milling use. Large lumber men from Wisconsin, Michigan, Minnesota and other eastern states came west in the years following 1892 and made large

purchases.

"Mr. Elliott says that until about 1892, the railroad company did not believe that the timber lands had any value which could be realized out of them for many years. That Mr. Britt, in cruising the lands in the Mohawk Valley in 1888, found large timber lands, and called the attention of Booth-Kelly people to them, and finally induced them to buy, and this was about the first sale of timber lands in any quantity, and was possibly made in the year 1891 or 1892.

"From Mr. Elliott's conversation, it is certain that Mr. Andrews, and those conducting the land business for the company, understood about the Act of 1869 which limited sales to actual settlers in limited quantities and for a limited price. This question was discussed some during all the time Elliott worked for the company. It is apparent that Andrews and Mills understood this point, and that they endeavored to dispose of as much of the land as they could before they were stopped, commencing about 1892, because as soon as there became a brisk demand for timber lands, the policy of the company seemed to change from trying to dispose of agricultural lands to that of making a special effort to find purchasers for timber lands, and the timber land sales were exploited thoroughly. During all this time, it is a fact that Mr. Andrews got as much for the land as its then market price. He was better informed than most of the timber owners, and was able to sell in large quantities; and taking advantage of these conditions and his knowledge, he constantly demanded the

top market price for timber lands.

"There was never any effort made to obey the conditions of the Act of 1869. Everything was done to sell the land as rapidly as possible in as large quantities as possible and for as high a price as possible without reference to the character of the purchaser or the use he intended to make of it.

"It was quite generally supposed and particularly by Andrews and the other railroad men themselves, that the eastern speculators were paying more for this timber land than they could get out of it for many years to come.

"The cruising was continued without reference to sales so as to include the entire grant as rapidly as possible, and the entire grant was practically all cruised by 1906 or 1907.

"Indemnity lands were cruised prior to selection for the very purpose of giving the company information to enable it to make intelligent selections. This does not mean that indemnity lands were all cruised before selection.

"Shortly after Mr. Harriman got control of the road in 1901, Mr. Eberlein came to the coast and organized the land departments of the different railroads in the Southern Pacific system. One of the first things he did was to stop sales and took the matter of sales entirely out of the hands of Mr. Andrews and Mr. Mills. The entire land business was checked over under Mr. Eberlein's direction. Mr. Eberlein expressed one of his

reasons for this, because he frequently said that Andrews was selling lands at much less than their actual value.

"Mr. Elliott does not know anything with reference to any instructions Mr. Eberlein has had from superiors, but recalls that the sales were stopped just about the time of the oil boom in California.

"Mr. Elliott remembers Eberlein explaining his reason for stopping sales by saying that he desired to acquire personal familiarity with the lands and their values before any more sales were made.

"Mr. Elliott remembers distinctly that there was a very marked change in the manner of land sales at about 1892. Prior to that time, there were practically no sales except to actual settlers in small quantities and for agricultural use. Then the demand for timber land began and developed very rapidly, and from that time on, nearly all of the sales have been of timber lands to timber men and speculators in large quantities and at prices considerably in advance of those obtained before.

"Mr. Elliott states that he is familiar, in a general way, with the lands in most of the large sales, and that all of the large sales contained some lands which had been reported to the company as valuable for agricultural use after the removal of timber, and some of the sales contained a considerable quantity of such lands.

"The character of the land and its susceptibility for agricultural use was apparently never considered. Sales were made in large quantities to the timber speculators of any of the lands without regard to their agricultural

character. The company never refused to sell lands to timber speculators where the price was satisfactory on the ground that the lands were capable of settlement. In a great many localities the Government land adjoining the timber land sold in these large quantities was actually under cultivation by settlers growing fruit, vegetables and other farm product. This had progressed to a limited extent because all of the country was undeveloped and settlers were just commencing to come in. Mr. Elliott thinks that in time fully 50 per cent of all lands now held by the railroad company will be valuable chiefly for the growing of fruit, vegetables and other farm products.

"Mr. Elliott thinks that there were quite a number of instances where people had actually settled on railroad land and wanted to buy the land for agricultural use, but were too poor to pay the price which the company demands, and were, for that reason, prevented from acquiring the land. In these instances, the price was very much in excess of $2.50 per acre.

"The general instruction of all the cruising was to ascertain the actual value of the land for all purposes, and Andrews endeavored to secure a liberal price for all the land. In fact, tried to get all that could be gotten out of the land.

"Mr. Elliott remembers very well the sale to Hammond & Winton in Tillamook county. It was a well known transaction at the time, and is the largest sale the railroad company ever made. There is absolutely no

doubt about the genuineness of this sale in 1901. Mr. Elliott and Mr. Britt together conducted the cruising of this land.

"The earlier contracts, even for timber lands, were, about all of them, ten-year contracts, and as the sales increased, Andrews took advantage of the increased demand and shortened the time of payment so that the latter ones were for seven years and some even for five.

"Mr. Elliott is confident that the railroad company never relinquished any forest reserve lands under the lieu selection law. The land in the forest reserve was sold by the company, and the purchasers made lieu selections.

"There was no substantial amount of agitation of the rights of the company to sell in quantities greater than 160 acres until during the past year. When the matter would be mentioned in the presence of Andrews, he would ignore the question and say that it was all tommyrot or evade it in some such manner as that.

"Mr. Elliott thinks that there is about 2,600,000 acres left in the grant unsold, but this includes unpatented lands and unsurveyed lands, and Mr. Elliott is not very certain just how much of the land is unsurveyed.

"Mr. Elliott has just completed cruise of Polk county railroad lands, and examined practically 193,000 acres and cruised it at nearly 7,000,000,000 feet of merchantable timber at a valuation of about $5,000,000.00. Mr. Elliott thinks the timber alone on the remainder of the grant now owned by the railroad company is worth

from thirty to fifty millions of dollars, and this is on a conservative estimate of quantity, as well as price.

"The Southern Pacific Company is running three mills in Lane County. They cut everything and make it into ties, bridge timber and other timber generally."

Q. Do you remember who were present at the time you had the conversation with me and that I dictated a statement to the stenographer as the conversation proceeded?

A. I do not.

Q. Do you remember who the stenographer was?

A. I do not. I don't think I knew at the time. I probably did not.

Q. Was it a man or a woman?

A. Well, I think it was a woman, but I would not be positive of that.

Q. There were three or four other persons in the office at the time, were there not?

A. Yes.

Q. I had something like five or six clerks there?

A. Yes, probably, and a door-keeper.

Q. A door-keeper?

A. Yes, some man standing at the door to introduce me.

Q. Do you swear to that, Mr. Elliott?

A. I think I would, yes.

Q. That I ever had a door-keeper, or that anybody ever stood there to introduce you or anybody else?

A. Well, I was thinking there was a man there, I would not be positive of that.

Q. Well, why would you be mistaken on that?

A. Didn't you have a door-keeper, one that ushered people in?

Q. Never had in my life, here or anywhere else.

A. Well, I may be mistaken on it then.

Q. Why could you be mistaken on a point of that kind, if you are attempting to tell the truth here?

A. Well, I was under the impression that there was a man there to usher people in and out.

Q. Any reason why you should imagine anything of that kind?

A. No, sir, none whatever. That is just my recollection of it. It might have been one of your clerks.

Q. You say he was a big door-keeper, do you, too?

A. He was big—there was a big man there, I remember. It might have been one of your clerks. I don't know who he was.

Q. Fulkerson weighed 110.

A. No, there was a larger man than that there.

Q. How many rooms did I have there?

A. I don't know. I was only in one room, I think.

Q. It is a fact, isn't it, that as I discussed this sub-

ject with you, I dictated it in my own narrative, as this statement shows, and not in the first person for you to sign. That is true, is it not?

A. You were dictating, talking to a stenographer there all the time. I didn't know whether they were taking it all down, and apparently they did not take it all down. That is, the conversation as we talked it.

Q. Well, is it not a fact that I would discuss a subjest with you for some few minutes, and then turn and dictate a sentence or two embodying the substance of our conversation?

A. That is what I thought you were doing, yes.

Q. Well, you heard what I dictated, didn't you?

A. I think I did at the time, yes.

Q. Did you correct me in any particular?

A. I don't remember now at all. I do remember asking you at one time if you were having it all taken down, the questions and answers.

Q. Do you not remember that, in response to that, I told you that we would discuss each subject until we had agreed upon the form of the statement, and that then I would dictate it to the stenographer, and that that plan was carried out?

A. I don't remember that at all. You might have said it.

Whereupon witness further testified that he left the employ of the Railroad Company May 1st, 1906, to take

other employment. He was not dismissed from or requested to leave the service and it is not a fact that he and Mr. Britt were both dismissed from the service at that time. He thinks he has a copy of his letter of resignation, not with him, but he thinks he can produce it and the answer from Eberlein at the time, stating that he was sorry that he saw fit to quit. He has never been discharged from any employment of the kind. He does not think he ever told any one that he had made a statement to Mr. Townsend, counsel for the complainant, concerning this case, and he never told any of the employes or attorneys or officers of the Railroad Company, that he had made a statement; he may have mentioned the fact to Rees, but never to any attorney or any one else, since this trial began, meaning since the testimony was being taken, when he was here a month ago. He may have done some work for the Railroad Company in the summer of 1907 but thinks 1908 was the first time after 1906, when he cruised Polk County. That fall he worked for a pulp and paper company in California and Nevada and may possibly have worked for the Company some in 1907, but he thinks it was not until 1908. When he left the employ of the Railroad Company—May 1906, he went to work on the county cruise of Polk County for the County Court of Polk County for assessment purposes. He cruised everything in that county, that was timbered. He did not examine other lands excepting to see that they were not timbered. They would take a township, where it was all timbered and would naturally cruise all of it. This took him five or six months and

he had six to fifteen people assisting him, a crew all summer of from six to fifteen men under the direction of himself and Walter V. Fuller, the man who had the contract with him. They had made a contract with the county, to cruise these lands. Mr. Fuller has already testified as a witness for the Railroad Company in this suit, as he has been informed. Fuller had been cruising lands before they undertook this work. Fuller was in the timber business, buying and selling timber but not associated with him. This cruising for Polk County, is the first association they had ever had, in a business way. He did not quit the Railroad Company for that work, but because he thought he could do better, working for himself, than on a salary. He does not remember what time in the fall of 1906, but it was probably in September that they got through cruising the lands in Polk County. After that, he went to California to work for the Floriston Pulp and Paper Company who are practically the same people who own the Crown Columbia Pulp and Paper Company at Oregon City. He worked there in California until the fore part of December, when he came home. The next year he and Fuller did a little buying and selling and cruising for other people, part in Polk and Lincoln Counties for about a year. He does not think he worked for anyone on a salary during the summer of 1907. He thinks they were doing a little timber business during that year. The first work he did, after this work that he and Fuller did in 1907, was probably for the Central Pacific Railway Company in California, but he is not positive about that.

He thinks he worked during the summer of 1908, probably 4 or 5 months, in the employ of Eberlein a short time and later in the employ of McAllaster. He does not think he was there when McAllaster came in September 1908. He only had worked a month or so for Eberlein that summer but it might have been in the summer of 1909 that he worked for McAllaster 4 or 5 months. He only worked a short time for Eberlein, if it was in 1908. Eberlein is the man who had charge of the Oregon and California Railroad land grant in Oregon at the time witness resigned. Eberlein wrote him, that he had some special work for him, to do, down in California and he came down there to do it for him and probably worked a month or six weeks in all for him at that time cruising and checking up a trespass that a timber company had made on the railroad land. When he went to work for McAllaster the next summer, in 1909, he was making a preliminary cruise of the timber in northern California in Siskiyou County and was employed probably four or five months. That was the last work he thinks that he did in California. When he got through in California he came up to Oregon and did a little work in this grant that same winter, until about February and since that time he has not done any work for the Company. That is probably the time he did this little work in Clackamas County, in February 1910, that he had forgotten about. Since that time he has not done any work for the Railroad Company.

Whereupon witness further testified as follows:

Q. Now, upon what do you base your testimony

that I assumed that you had a grievance against this railroad company when I had my interview with you?

A. Just from the way you began talking to me.

Q. Well, what did I say?

A. Well, you said that, the way I remember now, I don't say—I wouldn't swear that this was just what you said, but that "you are out of the employ of the company now, and of course you,"—now you didn't say this just in this many words, but you intimated that, of course, I would tell all I knew about it, about the company.

Q. Well, was there any reason why you should not?

A. I didn't know that there was.

Q. Was there anything that I said there to indicate that you would tell anything that was not true?

A. Well, I don't know if there is, only I think you misinterpreted a good deal of the conversation.

Q. Well, isn't it a fact that instead of assuming that you would tell anything that was not true, I simply stated to you that I assumed, from the fact that you were out of their employ, you would tell the truth about it? Isn't that all there was to it?

A. Well, I don't know.

Q. Isn't that true?

A. State that question again.

(Question read as follows): Well, isn't it a fact that instead of assuming that you would tell anything

that was not true, I simply stated to you that I assumed, from the fact that you were out of their employ, you would tell the truth about it? Isn't that all there was to it?

A. Well, I don't know as that would be the natural assumption at all.

Q. Well, didn't you swear a few minutes ago that I said to you that now you were out of the employ of the Railroad Company, I assumed that you would tell all you knew about it? Didn't you swear to that?

A. How is that? State that question.

(Question read).

A. I don't think I did.

Mr. Townsend: Please read that answer back a page or two.

(Answer read as follows): "Well, you said that, the way I remember now—I don't say—I wouldn't swear that this was just what you said, but that 'you are out of the employ of the company now, and of course you,'—now, you didn't say this just in this many words, but you intimated that, of course, I would tell all I knew about it, about the company."

Q. Did you not a few moments ago testify in answer to a former question of mine, that I said to you in substance that you were out of the Railroad Company, and I therefore assumed that you would tell all you knew about the company?

A. I think I did, yes.

Q. Well, why have you changed your mind? Did you not testify in answer to two or three questions back, that you did not so testify a few moments ago?

A. I don't think I did.

(Question and answer read as follows): "Q. Well, didn't you swear a few moments ago that I said to you that now you were out of the employ of the Railroad Company, I assumed that you would tell all you knew about it? Didn't you swear to that? A. I don't think I did."

Q. Did you not testify a few moments ago just as the Examiner has now read to you?

A. Is that the same question he asked before? The first testimony was there that from your conversation I thought that you assumed this. I didn't say that you said this, but I said that from your conversation, you seemed to assume, or I thought that you assumed, that because I was out of the employ of the company, that I would say so and so.

Q. Well now, is that your version of it?

A. As near as I can get at it from the different questions you have asked, they are all the same.

Q. Well, have you not, within the last ten minutes both sworn that I said in substance that because you were out of the employ of the Railroad Company, you would tell all you knew about it, and at another time, that that did not occur? Have you not sworn both ways in the last ten minutes?

A. I don't think so, no.

Q. Well now, have you anything else to justify your present testimony that I assumed that you had a grievance against the Railroad Company, and would testify against them?

A. No, I have not.

Q. Did you tell me that you had any grievance against the Railroad Company?

A. No, sir.

Q. In our interview in 1907?

A. No, sir.

Q. Did you tell me that you had had any trouble with them?

A. I did not, because I never had had any trouble with them.

Whereupon witness further testified that he became State Forester on March 25, 1911, and has served in that capacity ever since and has had a number of men in his employ engaged in the general work under his charge, including local fire wardens. He has had in his employ what he calls supervising wardens in all the heavily timbered counties. The local fire wardens are under their supervision. The supervisors, as they call them, are hired generally by the timber owners. There is about one supervising warden to each of the counties containing large timber. Last year, (1911) they had, he thinks, twenty-three. This year probably twenty-six. Some counties last year where they had one man

in two counties they had one for each of the counties this year, and he had three men employed in that manner who were formerly employed by the Oregon and California Railroad Company. That is all that he could recall. Roy Woods, W. J. Lander and Porter S. King, are all that he remembers now, that have been in the employ of the Railroad Company. He has no list with him of these supervisors working for him during the time he has been State Forester. There is a list of the supervisors for 1911 in "Defendants' Exhibit 360" being the first annual report of the State Forester. The form used while Andrews was in charge was changed soon after Eberlein came into office to a form similar to "Defendants' Exhibit 261" and "Defendants' Exhibit 358." He cruised a portion of the land near Marcola in Lane County, adjacent to the mill of the Southern Pacific Company, mill No. 1 he thinks it is called, and at various times cruised a portion of the railroad lands in Eastern Clackamas County,—he thinks some lands in almost every township in which the railroad lands are situated in Clackamas County, but could not say that he has cruised all of them. He thinks he has cruised some lands in all of these townships except one or two, possibly. He has cruised nearly all the railroad lands in Polk County and has seen and observed the character of them and has cruised quite a good deal of the lands in Jackson County and has cruised all along the California line and has cruised some in the Butte Falls country and some in Evans Creek and on the main Rogue River and has cruised in the Jenny Creek country in townships

39, 40 and 41, ranges 4, 5 and 6 east. His opinion as to the character of these unsold lands involved in this suit applies, generally speaking, to the even numbered sections intervening those lands. There may have been a quarter section taken up here and there that would support a family, and there might have been a quarter section sold years ago, but the land that is now vacant, that is now in the hands of the Railroad Company and the lands that are not held by settlers, or not being cultivated or lived upon, he would say as far as he knows, there is none that will support a family. The length of time it would take to grow timber large enough for milling purposes on logged off land, depends on the location. Where the red and yellow fir grow one gets fairly good small saw timber in fifty to seventy-five years, good piling and some saw logs out of it. Pine timber would take longer. At present prices the present growth of timber would average about $3,000 a quarter; that would be a very conservative estimate of the valuation on it. For timber lands say $20.00 an acre, referring to the value of timber. He thinks the only practical use that can ever be made of that land is with proper methods of reforestation, to reforest it and get a new crop of timber about every seventy-five years. In seventy-five years from now it would probably be worth as much as the present crop is at this time, anticipating an increased price for the timber. At present prices it would not be worth so much. In his judgment there is approximately 4,600,000 acres of land within the exterior boundary limits of this grant that will never have any practical use except-

ing that of reforesting and getting a new crop of timber about every seventy-five years. This includes the land in the immediate vicinity of the Southern Pacific Company's mill at Marcola, that is the main portion of it. There may be little strips of land along near the Mohawk Creek that would be of more value for agricultural or grazing purposes, but the main portion of the land is of more value for raising timber. The country there is quite rough and generally is too rough for agricultural purposes.

Whereupon the witness further testified as follows:

Q. How about that country in around Butte Falls? Do you find any quarter sections there that would support a family among the railroad lands?

A. I do not think there are any of them there supporting a family—any quarter section in that country.

Q. Well, the Railroad Company will not let them.

A. No, but I mean the Government lands. You asked me about the Government lands.

Q. No, I asked you about the railroad lands.

A. Well, I don't think there are. And I say that I don't think there are of the Government lands where a man is living there on a Government piece of land or any piece of land, he has a little bit of agricultural or hay land and he uses several hundred or possibly several thousand acres of land to range his few stock on to make his living.

Q. Well now, if there are a large number of fami-

lies living on the even numbered sections in the township in which Butte Falls is situated, and have been living there for years, making a very comfortable living, and none of them with more than 160 acres, is there any reason why you should not have seen it when you went through there?

A. No, there is not.

Q. And if there are a number of families maintaining themselves on not to exceed 160 acres of land in the immediate vicinity of the mills of the Southern Pacific Company at Marcola, is there any reason why you should not have seen it?

A. No, sir. There are families in there along the Mohawk River, that are living on probably 160 acres or maybe less. But that is land that has been taken up for years, and it is not such land as is now vacant.

Q. It is entirely different from the lands of the Railroad Company, is it?

A. It is entirely different, in that it lays along the stream and is either little bottom lands or very low bench lands, and not rough and broken, like the vacant lands are.

Whereupon witness further testified that he knows a man by the name of Balderee who is logging foreman for the Gerlinger Logging & Lumber Company in the Black Rock country in Polk County. He thinks that during the time witness was cruising near Marcola for the Southern Pacific Company, that Balderee was

with the Booth-Kelly Lumber Company. Witness would not swear that he never saw a family cultivating and supporting themselves on logged off lands immediately adjoining these railroad lands, of the same character except that the timber had been removed and the land cleared and subjected to cultivation, but he cannot recall a quarter section of land that has been sold by the Railroad Company, on which a family is being supported. He became acquainted in a general way, while working as a cruiser, with the identity of the lands that had been sold by the Railroad Company, as well as the lands which still remain unsold. For a number of years he cruised practically all that the Company sold.

Whereupon on redirect examination witness further testified that he was in attendance upon this hearing under subpoena issued in this cause and served upon him.

Whereupon defendants offered in evidence pages 19, 20, 21, 22, 23 and 24 of "Defendants' Exhibit 360" as to the list of State Fire Wardens for 1911, showing patrolmen paid from Federal funds under section 2 of the Weeks law and State Fire Wardens serving without compensation, or in employ of timber owners or the U. S. Forest Service.

Whereupon witness further testified that these people whose names are on these pages were employed during 1911 as there stated.

Whereupon HOMER D. ANGELL, being called as a witness on behalf of defendants, and being duly sworn, testified that he is thirty-seven years of age, an

attorney, and resides at Portland, Oregon. He and his partner were employed by the land department of the Oregon and California Railroad Company for some time under Eberlein, and had charge of several men who made examinations of various parts of the grant and made reports on the character of the land and took photographs of certain portions of it. That has been four or five years ago now. He is a practical surveyor; began surveying during the summer when he was a small lad, and was employed continuously in that line of work from 1891 until 1903, and has had some, but not extensive, employment along that line since. A good portion of that time he was employed as chainman or other work on surveys, and for a number of years he did contracting work. He considers himself a competent surveyor in matters of that kind, but he never did any surveying for the railroad company other than assisting in locating these lands, of which pictures were taken. He assisted in taking some of the photographs marked collectively "Defendants' Exhibit 270." He assisted in taking the photograph, locating the land from the Government corner, and made the notations, referring to John L. Snyder's cabin on the southeast quarter of Section 17, Township 4 north, range 3 west; and also the notation marked "2" thereon; also Nos. 3, 4, 6, 7, 8, 9, and 10. These seem to be all the pictures that he can identify other than there were two large pictures taken, when he was present.

Referring to Defendants' Exhibit 267, with a notation attached to it, and affidavit made by himself and F. A. Elliott, he made that affidavit so signed by him, and

assisted in taking the picture, and he is one of the men shown standing on the right hand corner of the picture, which was taken by Gifford. The picture was taken from a point in the south half of section 8, township 7 south, range 6 west, and covers an estimated distance of perhaps eight miles in the view shown in the picture. The camera stood, he thinks, on section 8, an even section, but the lands that they were endeavoring to show in the picture were further out, and the picture is a correct representation of what it purports to show.

Referring to the photographs identified by him as part of Defendants' Exhibit 270, they determined who erected these cabins first, by the notices posted upon the cabins, presumably by the claimants, and by the names of the claimants on the notices, and in some instances they saw the claimants themselves, who were present. There was no one living in any of these cabins shown in the pictures which he has identified. In some few of them there were some small utensils for cooking, and in one, a roll of bedding, he believes. The cabins did not have any appearance of having been the domicile of a family or of anybody other than one or two showed that some one had camped there for a night or such a matter. There was an excellent stand of timber in each case where these cabins were situated; chiefly fir.

Whereupon complainant objected to this testimony as incompetent, irrelevant and immaterial, and it was agreed that this same objection shall be considered as taken to all the testimony of the witness relating to the character of the lands within the limits of this grant and

settlements thereon and public land entries thereof.

Whereupon witness further testified that he thinks he is familiar with the stand of timber in Western Oregon, which would be deemed commercially valuable. He gained his knowledge chiefly from his work in the Government service, in surveying timber lands. His work has been quite largely in timbered areas, and it was necessary to his report, to characterize the topography of the land, including the timber upon it, and the chief value that he ascribed to the land, and his experience in making these surveys and reports was in Oregon, and especially timber lands in Oregon, Washington and Idaho, and some portions of Montana. In each instance, the claims upon which these cabins were constructed, and upon which these parties whose names he had given, had made claims, that he examined, were taken upon lands that had a very heavy stand of timber, and there was no instance where a claim was made on lands that would not be classed as timber lands. What is considered a stand of timber per thousand feet board measure in Western Oregon that would make it commercially valuable for timber, depends somewhat upon its location, but his general experience is, that if there is a million feet to a quarter section, unless it is so isolated that it would be impracticable to market it, that it is valuable for timber. He has been over a considerable portion of the lands involved in this suit. He has been in Klamath County, but could not definitely say whether he has been on the portions of the grant in that county, but he has been pretty well around in the timbered area of that

county. He has been along the road from Ashland to Klamath Falls, and on most of the prominent roads, leading out from Ashland. He did some surveying in Klamath County several years ago, near Ashland, but does not recall the township. The timber through which he went where he made these surveys, was of good quality and a good stand of timber. A portion there, is exceptionally valuable for Oregon timber. It is what is called, he believes, sugar pine, and various qualities of pine, not very common in this state. But the major portion of timber is fir. He has been through Jackson County from several different directions, and especially in the timber. He surveyed, he thinks, at least one township in Jackson County, but on Williams Creek. He went from Jacksonville, and it is not a great way out there, west. He has been over lands of the company in the Williams Creek country in Jackson County. The stand of timber in there is not so good as the general stand in some sections of Southern Oregon. The timber is more scattering, but the land in that township is valuable only for timber, in his estimation. Outside of the timber lands, and outside of the valleys of the Rogue River and streams that lead into it, in Jackson County, in his opinion, the lands are of little value. These lands are rocky, covered with very thick brush, and scattering timber in places. There are open places, but outside of small tracts along streams, they do not seem suitable for agriculture, and there is a very poor stand of grass for grazing purposes on the major portion of it. The brush that grows over a good portion of this land that he has thus de-

scribed, is buck brush, commonly called, and manzanita, and these have no commercial value whatever of which he has ever learned. He has been over quite a portion of Josephine County out from Grants Pass. In a general way, these lands are similar to the lands in Jackson County, although the timber is better, he thinks, than in Jackson County, and perhaps more mountainous. The soil of the lands in Josephine County, on these uplands, is of poor quality, not adapted to agriculture. A good portion of the soil is a sort of red soil. There is a great deal of decomposed granite soil. In fact he has had occasion to ship some of that granite from Grants Pass for use at Portland in making walks, and it is used as ballast on railroads to some extent. He does not know of any use that it can be put to for agricultural or horticultural purposes. He has never been in Curry County. He has been over Douglas County quite generally. He did considerable surveying for the Government in that county, ran about thirty miles in length of the Willamette Meridian, he thinks, in Douglas County, and the lands of the company with which he is familiar in that county, are very mountainous and covered with heavy timber or undergrowth, with the exception of isolated tracts on creek bottoms or streams, and are not suitable for agricultural purposes. They are chiefly valuable for their timber, and there are portions suitable for grazing, but not to any great extent, back in the mountains. The chief stand of timber, a very valuable stand in that country, is fir. He has been over portions of Lane County in the timbered area; in fact, up on the McKenzie River,

and north and south. He has made some examinations of timber lands in Lane County in a general way, looking to see the quality of the timber, and if there were timber lands vacant, but has not made any examination, or been over any of the lands west of Eugene, in the Siuslaw country belonging to the company, or other timber owners. The lands which he examined in Lane County, or has seen, were principally tributary to the McKenzie River. They were very high mountainous lands, covered with timber or old burns grown up with undergrowth, and the chief value of these lands covered with timber, were for their timber. It was practically its only value under known conditions. He knows of no use to which these burned over lands in their present condition could be put, but he presumes that if they could be denuded of the brush so that grasses might grow, they would be suitable for grazing, but the cost of putting them in such shape that they would be suitable for that purpose, would be prohibitive. He has been in the Eastern portion of Linn County in the timbered area, in the Santiam country, up from Lebanon. He did some surveying on the Santiam, in township 10 south, range 4 east, but is not sure that this is in Linn County. He has been over a considerable portion of the company's lands in the eastern part of Linn County, and especially in connection with Government surveying. The chief characteristic giving these lands value is their timber; practically their only characteristic, other than isolated portions. These portions that might be utilized for some agricultural purposes, are small tracts, and his experi-

ence has been that there is no tract other than just a few acres, that is suitable for agriculture, at least without an enormous expense. These tracts are isolated and separate from one another, and lie chiefly along streams. There are certain level patches on divides that might be adapted to agriculture, but no body of land of any considerable size. He has not been in Lincoln County to any extent. He has been over portions of the timbered area of Marion County, and the lands, according to his information remaining unsold in the grant in that county, are mountainous and rough, and portions of them are covered with a good stand of timber, and their chief value is for the timber. There is a considerable area of burned over lands in Marion County among these lands. They are covered with stumps and standing dead trees, and heavily covered with undergrowth. Such lands have practically no value under modern conditions, of which he knows. He has been out through portions of Polk County, and has been on and examined some of the lands of the Company. The lands that he had to do with in Polk County were timbered lands, and portions of them were in old burns, and those that were covered with timber were chiefly valuable for their timber. The burned over land is of very little use without a great deal of expense in attempting to clear it. He has been over portions, but not over the whole of Clackamas County. He has been in places over the timbered lands on the Clackamas River. These lands are timbered, with the exception of portions that are scattering burns. The chief value of the lands belonging to the company that

he has examined in Clackamas County, was their timber. He has crossed over the mountains going from North Yamhill to the Coast in Yamhill County, over the headwaters of the Trask, and in going that way he presumes he would see or go over unsold lands of the company. The company's lands are scattered through there in the odd sections, and he thinks it would be impossible to go across, without crossing the company's lands. These lands and the adjacent even sections are mountainous, and considerable portions of them are covered extensively with timber, a good stand of commercial timber, and in places there are burns. He has to some extent been over the company's lands in Multnomah County, up towards Latourelle Falls, back from the Columbia River. These lands are very mountainous, exceptionally so, and covered with a heavy growth of timber. Portions of those lands perhaps have the heaviest growth of timber in the grant. He has been in the vicinity above Latourelle Falls, and towards Larch Mountain, and these lands have an exceptionally good growth of timber. It is his impression that he has not been over any of the lands in Washington County. He has been over roads leading into Tillamook County, which passed through the mountains, and in doing so, had to go over the timber lands. And from his knowledge of these lands in Tillamook County, he would say their chief value was for the timber. There is an excellent stand of timber on the mountainous lands in Tillamook County. He has been in Columbia County, out in the vicinity of these claims, the pictures of which were identified by him, and he ex-

amined somewhat the character of the lands surrounding these claims. The general character of the unsold lands of the Company in Columbia County is very heavily timbered and covered with a very heavy undergrowth. Their commercial value is for the timber only. According to his understanding of the value of timber, these claims of 160 acres each, are worth from $5,000 to $20,000. The market value of stumpage on such timber in Western Oregon runs from 75 cents to two or even three dollars, owing to location with reference to ability to get it out. He has not dealt in, bought or sold timber lands, but knows of them being bought and sold. He has quite a general knowledge as to the value of timber, for the reason that he had considerable to do with it at the time he was connected with the Oregon and California Railroad Company. The lands that were sold, the stand of timber was taken, and he placed valuations upon it, and then he had to do with the value of timber other than that. He surveyed in the Forest Reserves, but not for the purpose of locating the reserve itself. He has surveyed for the Government, lands that were in the reserve. He has been through Coos County, and thinks he surveyed a small fractional township in that county, in the timbered area, which had an excellent growth of timber. The character of the lands which he surveyed in Coos County is very rough and heavily covered with undergrowth. Its chief value is for its timber. He was reared on a farm in Eastern Oregon, and lived in a farm until he was about fifteen years old, and since that time has some knowledge of farm life from obser-

vation in this country, particularly in Western Oregon.

Q. Now, suppose the company had sold these lands to so-called actual settlers, in quantities not exceeding 160 acres, and at a price not exceeding $2.50 an acre, and the actual settler had obtained a good title to the quarter section thus sold to him, and it was covered with this stand of timber or with the timber that is on these unsold lands, how long do you think it would be after the so-called actual settler got his title at $2.50 an acre, that he could sell that land to timber investors?

Q. And what would be the best use that he could make of that land?

A. Practically the only use he could make of the land would be to sell it for its timber, or sell the timber. My experience has been, in surveying in the timbered areas of this state, as well as other states, that lands acquired by homestead from the Government on the timbered areas are never occupied for any appreciable period after title has been acquired. I suppose that in all the lands that I have surveyed, and that I have been connected with since 1892, there were not half a dozen that were acquired either by homestead or by purchase, that the parties lived on after they secured their title.

Q. What did they do with the land?

A. They moved off, the buildings went into decay, and the small portions that were cleared were soon overgrown with undergrowth, and if there was timber on the land, the lands were sold to holders of large timbered tracts.

Q. Would that be the experience of these lands if the title was passed to these so-called settlers, in quantities of 160 acres at $2.50 an acre?

A. It would.

Q. Now, suppose that a settler was expected, under the Act, to go out there and live on one of these quarter sections, like some of these photographs which you have taken here, and to make a living for himself and his family on that quarter section, and to confine his stock that he might own and might pasture to the quarter section, what, in your judgment, would be his ability to make a living for himself or his family on that quarter section.

A. In my opinion it would be impossible to make a living off the land itself. If the land was contiguous to roads, he might cut wood and haul that to market and make a living, or he might by trapping or hunting; but by making a living from agriculture on the land, it is an impossibility.

Q. Could he make a living by grazing on the land?

A. There might be some isolated claims that he could, in some portions of Southern Oregon, but in the mountainous regions of Tillamook County or Yamhill County, Columbia County, or in the Cascades, along the border of the Cascades, where the company's lands are now located, it would be impossible in practically every instance to make a living by grazing.

Q. If he undertook to live on any of these quarter sections by means of pasturage, would he or would he

not have to have an out-range besides?

A. It would be impossible to make a living off any one of these timbered quarter sections by grazing, being confined to that quarter only, in its present condition.

Q. Suppose a man went up into these big burns, picked out a quarter section that was burned over, or that did not at the present time have any considerable amount of timber on it, and undertook to make a home there for himself and his family, put some of this land to grass in the stumps after burning off the debris, do you think, or do you know of any quarter section within the limits of this grant where a man could go and take his family and fence his quarter section and make a living by pasturage on that quarter section?

A. I do not think there is a quarter section in the grant that could be used for that purpose. One of the main reasons why I am inclined to that opinion is that these lands are in high altitudes, and there is considerable snow falls there, and it lies on for a long period, and it would be necessary to raise hay in order to winter stock, or else take them to some other place during a large portion of the year. And a great deal of this land, when we begin surveying in June, the snow is very deep, especially on the north hillsides and all the mountains, and does not go off until midsummer, and then snow begins to fall in September in a great many places. As soon as we have the fall rains in the valley, it is snowing on the mountains.

Q. Some of these lands under the testimony here

have been classified as grazing, and there has been some testimony that these lands when logged off could be seeded, after the fire had run through and burned over the land, and that the land could be pastured in that way over considerable areas. Do you not think, or do you think, that would be practicable, that it could be done?

A. Not practicable under present conditions. From my own personal knowledge, I know of thousands of acres that have been logged off that are admirably situated for that thing, if it could be done, but they are not utilized for that purpose, and I presume the chief difficulty is that as soon as the timber is removed, there is a very dense growth of undergrowth springs right up, and that may all be taken off one year, and next year it is all on there. It is almost impossible, seemingly, without taking the stumps and plowing the land thoroughly from year to year for a number of years, to eradicate the undergrowth.

Whereupon witness further testified that re-forestation of these lands has not been called to his attention and he has no knowledge of that. He discontinued his employment about the time Mr. McAllaster became connected with the company, he thinks about four years ago, and since that time he has had no employment with the company, or with the Southern Pacific Company, and thinks he never made any cruising or formal reports to the company of cruising, with the exception, possibly, of one or two instances, practically none.

Whereupon, on cross examination, witness further

testified that he was born in Eastern Oregon, about eight miles from The Dalles, and remained on the farm until he was fifteen years of age, but was going to school a portion of that time. He was admitted to the bar in 1902, and has been engaged in the practice of law since 1903. Since he was twenty-one years of age he has been in the Government service other than when he was a student during the winter time, until he was admitted to the bar, the Government service referred to being Government surveying. He was a student in school during the winter and engaged in surveying during the surveying season, working for W. E. Campbell, United States Deputy Surveyor, and for Ed Sharp, who was a deputy, and after that witness was a contractor. He had been employed by contractors, men who had Government contracts, up until about 1900, and then for about ten years he was contracting for himself. He has owned farm lands since he reached man's estate, but he has not been actually engaged himself in farming, and would say that he understands farming as it is practiced in this country, but has not been engaged personally in the work of farming, and he has not been a farmer, except as an investor in some lands that he owned that are farm lands and that are being farmed; his experience until he was fifteen years old, on a farm, and since then, his people being farmers, he has had more or less to do with farmers. He is not a timber cruiser, although he testified as to having made some cruises of timber within this grant. He had made estimates of timber standing on claims, and he supposes it might be said that he made these as

a timber cruiser, although he is not a cruiser and does not pretend to be. He thinks he can determine in a fairly accurate way the stand of timber on a claim. His experience in the woods has been such, he thinks, that he can do that, but he has never followed timber cruising. The memorandum noted on these photographs referred to by him, were made as soon as he returned after taking the picture, perhaps the next day. He made the notes in the field and then had them written on the typewriter. He made notes and wrote them as soon as he could get to a typewriter. These are not memoranda that he made on the ground, he does not think they are even copies. He made notes and then made this up from his notes as soon as he could get to a machine, and they are not verbatim memoranda that he made on the ground. The affidavit attached to Defendant's Exhibit 267 was not made on the ground, but immediately after returning from the field, possibly the next day, when the matters were fresh in his mind. Two or three days was usually the extent of any one trip. He supposes he would say that he was in charge of the parties that were cruising this land, making the examinations and taking the photographs, if one would say that any one was in charge. They went out, two or three of them, to take the photographs, and received all of their directions from Eberlein. The photographs were taken in 1907, on the dates indicated in the memoranda. He thinks that it was after the people had filed their applications, as they were first filed in San Francisco. He was informed by the company, and it was his understanding, that these

people had filed applications. It is his impression that he surveyed a township for the Government on Indian Creek, in Klamath County, but he is not certain whether it was Klamath County or not, but he does not recall the details, because it is a good many years ago, and he has had no occasion to refer to it. He thinks that it was in, perhaps 1902. He did not, in 1902, survey that entire township, it was prior to that time. He was not in charge of the party. He was doing Government work at the time, but went with his nephew, who had some work there, and witness had some work in another place and they joined their cruise together, and went in on that work. He thinks that is the only township he surveyed in Klamath County, and he is not sure that it was in Klamath County, but he has been over Klamath County pretty much. He went from Klamath Falls to the lake, and then from the lake down to Medford, on a trip to see the country. He then went back on this work when they went up Indian Creek, and he passed through Klamath County, from Ashland to Klamath, and has been on the railroad running from Weed, California, up close to Klamath Falls. He is not sure whether that touches the lands involved in this grant or not. These trips that he made were traveling along the public highways and not surveying trips, except the one surveying trip that he had there. He made one or two other trips in that country. He thinks it is Klamath County, looking at some lands in connection with work for the company. Rees and he went down there. He does not recall the township; they went out from Ashland, back

into the mountains. He surveyed a township in Jackson County, and he thinks it is 39 south, 6 west, but is not sure—it is on Williams Creek, and that is the only township he surveyed there, he thinks, and the only surveying he thinks he did in that county. He thinks he did not do any cruising there. In Douglas, he did quite a little surveying, where he ran the Willamette Meridian, if that is in that county. It is either in or right on the boundary line, but may be on the boundary. He thinks he was on Township 32 south, to 27 south, going north. Referring to Defendants' Exhibit 259, it is his impression that they ran the meridian line from the southern boundary of township 30 south, to the northern boundary of township 27 south. He does not recall that he has done any surveying in that county excepting these two townships, and running the meridian, and he thinks perhaps not. He went through that country, through the timbered area there, looking for vacant lands after that, but did not make an accurate cruise of the timber, but sized up the timber going through. He did not go through the entire timbered area in Douglas County, but went over quite a bit of the timber near that he mentioned that he surveyed, and west of that. Since he became twenty-one years of age he has been in the mountains in the summer time, and in the winter in school, with no particular place of abode, excepting that his people live at The Dalles, where he supposes his headquarters would be, where his mother lived. He attended the University of Oregon four years after leaving The Dalles, and then three years in Columbia University in

New York, and has lived in Portland since 1903. He does not recall whether he did any surveying in Josephine County.

Q. In Lane or Linn County, have you surveyed any there?

A. I have done no Government work there.

Whereupon witness further testified that he had not cruised any lands in Linn or Lane County, but had been through the lands, looking at them to determine their character and the amount of timber, but not to make an accurate cruise. Some of that work was done for the company, and locating certain lands to see what they were valuable for, and as to other lands, he was looking for Government land that might have timber suitable for taking under the Timber and Stone Act. He has never filed a Timber and Stone claim or homestead entry, and never dealt in timber lands.

Q. Why didn't you file on some of the timber-land there was an opportunity to get?

A. If you had told me that ten or fifteen years ago, I would probably be worth $10,000 or $15,000 more. One reason I did not, when I was in the Government service I was prohibited from taking any lands under Government Act. That prohibited me from taking lands when I was directly connected with the Government, but not after I discontinued.

Q. You were not connected with the Government or working for the Government?

A. Oh, yes, I was. I was a contractor, and under bonds, and had to file my oath of office.

Q. That was while you were engaged as a contractor?

A. Yes.

Q. On the survey of these lands?

A. Yes. That continued up until about 1904, because there were certain contracts had not been closed up until some time after I was practicing law; they hadn't been finally disposed of, and I was still connected with the Government.

Q. Well, that merely contractual relation would not prevent you from filing on timber-lands, would it?

A. I think so.

Whereupon witness further testified that he would like to correct his testimony if he stated that he had made numerous trips over a number of counties looking for a timber claim. He did not state he was looking for a timber claim. He said he was looking for timber land, or lands that might be desirable to be taken under the Timber and Stone Act, but not for himself. He was looking for these lands for various persons. He had told two or three people where they might find timber claims, and he thinks they paid him for this information. That is the only selecting that he ever did. He never did any surveying or timber cruising in Polk County. He has examined the character of the lands with reference to timber for the company, but has not made accurate

cruises. He thinks he has never cruised or surveyed any lands in Benton, Washington, or Columbia counties, but he has examined lands for the company and made some other examinations for their general character. There was a great rush for timber lands here and the people who lived in Oregon, most of them, woke up about the time the timber was all gone, to the fact that they were valuable. After the lands practically were all taken, he did some reconnoitering around through various counties to see if there was any timber that might still be had. This was along from 1900 on. The timber excitement in Oregon started before 1900. He knows a great many people came here from Michigan and Minnesota as early as 1892, and took lands in the Santiam country. Large portions of these timber lands were acquired from the Government in 1900 and subsequently. He noticed the excitement with reference to filings in his Government work as early as 1892. Perhaps it was not so generally known then—it was more quiet. People who had come from timbered states, such as Minnesota and Michigan, were quietly taking up claims, and his connection with it was to the extent: these people who would locate on a township and where there would be three in a township, they would make application, and ordinarily the Department would order the township surveyed, so that in all these townships that they surveyed they would find three or four settlers, maybe half a dozen, who were acquiring timber claims under homesteads. There were no other persons in the township. It gradually increased until along in 1900. It was, he supposes, at its height

along in there some place. Large bodies of these lands were acquired in 1900 and subsequently through Santa Fe and other scrips that were required to be filed on surveyed lands, although he has no particular knowledge as to that. He did not have much to do with lands upon which scrip was placed. Scrip was either placed after the lands had been surveyed, or if it was scrip for unsurveyed lands, they knew nothing about it. They would put the scrip on and would not ask to have it surveyed. That was principally Northern Pacific scrip. There was some "additional" scrip. These photographs were all taken in the examinations of this land made while he was employed by the O. & C. Railroad Company and under the directions of the officers of that company. They were practicing attorneys when they were employed by the company. Their work when they began for the company was chiefly with reference to the investigation of titles. There were a great many of the grant lands that had been sold for taxes, and some of them had adverse possession running against them, and there were gaps in the rights of way, and matters of that sort, and their operating lands were involved. There never had been a thorough investigation of the titles, to see what condition they were in, and when Eberlein took charge of the office he started an investigation of that sort, and Mr. Bristol had charge of that for some considerable time. After Bristol quit the service they took up the work, and that was chiefly the work that they were doing, although they did do some work along the line that he has been testifying, in the way of examining

lands and making reports on lands upon which applications had been made under the Act of 1869; but the major portion of their work was in reference to titles. When that work was completed their services were discontinued.

Q. After the agitation of this suit began, then you were put on this work of examining into settlements?

A. Well, we made some examinations while we were closing up the other work. When the other work was closed up, why—

Q. That was in 1907?

A. Yes.

Whereupon on re-direct examination witness further testified that as he is informed, Henry S. Graves is Chief of the Forest Service, succeeding Mr. Pinchot, and he has seen the article "Defendants' Exhibit 345" purporting to have been written by Mr. Graves. Whereupon defendants offered in evidence this article entitled, "Farms in the National Forests," reproduced under the head of "Extension of Remarks of Hon. William Kent, of California, in the House of Representatives, Thursday, August 15, 1912," beginning at page 12098 and including page 12102 of the Congressional Record, and being the article in the Saturday Evening Post of August 17, 1912,—to which complainant objected as incompetent, irrelevant and immaterial and not properly identified,—which was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence and identified as Defendants Exhibit 345.

Whereupon witness identified the document "Issued June 17, 1911. U. S. Department of Agriculture, Forest Service—Bulletin 88, Henry S. Graves, Forester. Properties and Uses of Douglas Fir." Washington, Government Printing Office. 1911," which was marked Defendants Exhibit 346.

Whereupon defendants offered in evidence this document, to which complainant objected as incompetent, irrelevant and immaterial, and Defendants' Exhibit 346 was received in evidence, and the part thereof particularly offered is in words and figures as follows:

"Issued June 17, 1911.
U. S. DEPARTMENT OF AGRICULTURE,
FOREST SERVICE—BULLETIN 88.
HENRY S. GRAVES, FORESTER.

PROPERTIES AND USES OF DOUGLAS FIR

PART I. MECHANICAL PROPERTIES
PART II. COMMERCIAL USES.

BY

McGARVEY CLINE, Director, Forest Products Laboratory,

AND

J. B. KNAPP, Assistant District Forester.

(Seal) UNITED STATES DEPARTMENT OF AGRICULTURE
1862 1889
AGRICULTURE AND COMMERCE
THE FOUNDATION OF MANUFACTURE

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1911."

[2789]

"LETTER OF TRANSMITTAL.

UNITED STATES DEPARTMENT OF AGRICULTURE,

FOREST SERVICE,

Washington, D. C., January 16, 1911.

Sir: I have the honor to transmit a manuscript entitled 'Properties and Uses of Douglas Fir,' by McGarvey Cline, Director of the Forest Products Laboratory, and J. B. Knapp, Assistant District Forester, and to recommend its publication as Bulletin 88 of the Forest Service. The 3 plates and 15 diagrams which accompany the manuscript are necessary for its proper illustration.

Respectfully,

HENRY S. GRAVES, Forester.

HON. JAMES WILSON,
Secretary of Agriculture."

(Pages 9 and 10.)

"PROPERTIES AND USES OF DOUGLAS FIR.

INTRODUCTION.

It is the purpose of this bulletin to present the facts about the mechanical properties and uses of Douglas fir which have been collected by the Forest Service. Part I, which deals with the mechanical properties of Douglas Fir, is based on an exhaustive series of tests made in the laboratories of the Forest Service. The results of these tests are of special interest to the users of structural timber. Part II, which deals with the commercial uses of the timber, is based on information furnished by lumber manufacturers and other industrial concerns that use Douglas fir. The gathered facts are of interest in that they show the wide utilization of this tree.

Since 1903 the Forest Service has been making a comprehensive series of tests to determine the mechanical properties of the commercial woods of the United States. The work has been done at laboratories conducted in cooperation with the Yale Forest School, New Haven, Conn.; Purdue University, Lafayette, Ind.; the University of Colorado, Boulder, Colo.; University of California, Berkeley, Cal.; the University of Washington, Seattle, Wash.; and the University of Oregon, Eugene, Oreg. General summaries of the results secured have been published in Forest Service Circulars 32 and 115, 'Progress Reports on the Strength of Structural Tim-

ber,' and from time to time other circulars dealing with particular series of tests have been issued.

The tests on Douglas fir were made at the Oregon and California laboratories; the material was cut in Lane County, Oreg., and was contributed by the Pacific Coast Lumber Manufacturers' Association and by the Oregon and Washington Lumber Manufacturers' Association. For the information contained in Part II the Service is indebted to many manufacturers and users of Douglas fir, and especially to the officers of the Oregon, Washington, and Pacific coast lumber manufacturers' associations, for their cordial cooperation.

Douglas fir may, perhaps, be considered as the most important of American woods. Though in point of production it ranks second to southern yellow pine, its rapid growth in the Pacific coast forests, its comparatively wide distribution, and the great variety of uses to which its wood can be put place it first. Estimate of the available supply range from 300,000,000,000 to 350,000,000,000 feet board measure. It is very extensively used in the building trades; by the railroads in the form of ties, piling, car, and bridge material; and by many of the manufacturing industries of the country. As a structural timber it is not surpassed, and probably it is most widely used and known in this capacity.

The species is most abundant and attains its largest size not far above the sea level in southern British Columbia and in the region between the coast of Washington and Oregon and the western foothills of the Cas-

cade Mountains. (See Diagram 1, map.) Here large trees crowded close together rise to a height of from 200 to 300 feet, forming, either alone or mixed with hemlock, very dense forests that yield from 35,000 to 60,000 board feet per acre and sometimes as much as 100,000, and are in one recorded instance 500,000 feet.[1]

The wood is strong and hard, not very heavy, and fairly durable. These qualities particularly recommend it for structural purposes. The grain is straight. The spring and summer wood vary greatly in density; the spring growth is soft and spongy and almost white in color, while the summerwood is hard and flinty and very dark. The grain varies from as few as four or five rings to the radial inch to as many as forty-five.

In the eastern part of its range in the Rocky Mountain region, where the rainfall is not abundant and where extremes of climate occur, the trees are much smaller, rarely over 1½ feet in diameter and over 90 feet high. In this section the stand ranges from 2,000 to 8,000 board feet per acre.[2]

Douglas fir is known by various names in different sections of the country. The most common names and the States in which they are used are:

Douglas fir (Utah, Oregon, Colorado, Washington.)

Red fir (Oregon, Washington, Idaho, Utah, Montana, Colorado).

Douglas spruce (California, Colorado, Montana).

Yellow fir (Oregon, Montana, Idaho, Washington).

Spruce (Montana).

Oregon pine (California, Washington, Oregon).

Fir (Montana).

Red pine (Utah, Idaho, Colorado).

Puget Sound pine (Washington).

Douglas tree.

Cork-barked Douglas spruce.

The name Douglas fir has been adopted by the Forest Service and by various trade and technical associations, and is coming into general commercial use.

[1]Transactions of the Royal English Arboricultural Society, Vol. VI, p. 228.

[2]For a comparison of the Rocky Mountain and Pacific Coast forms of Douglas fir see Forest Service Circular 150 Douglas Fir, by E. H. Frothingham.

Whereupon witness recognized "Circular 150," "U. S. Department of Agriculture, Forest Service—Gifford Pinchot, Forester," marked Defendants' Exhibit 347," and recognized the same as an official bulletin issued by the U. S. Department of Agriculture.

Whereupon defendants offered said document in evidence, and particularly page 13, which shows the timbered area "(1) North Coast Region," Douglas fir covering the western part of the state of Oregon and Washington, to which complainant objected as incompetent, irrelevant and immaterial, which Defendants' Exhibit 347 was received in evidence and is hereinafter set out

and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness recognized as an official document issued by the Department of Commerce and Labor, Defendants' Exhibit 348, being "Forest Products, No. 2 Lumber, Lath and Shingles 1910 Compiled in cooperation with the Department of Agriculture: Forest Service, Henry S. Graves, Forester, issued February 20, 1912."

Whereupon defendants offered said document in evidence as Defendants' Exhibit 348, and read into the record that part of the table, page 4, "Table 2.—Lumber, lath, and shingles" as follows:

Number of active mills reporting and quantity of lumber cut, with per cent of increase and per cent distribution, by states: "1910, 1909, and 1908," under the column:

State	Rank in Production			Number of Active Mills Reporting		
	1910	1909	1908	1910	1909	1908
Washington	1	1	1	951	1,143	929
Oregon	4	9	8	574	696	595

Page 5, "Table 2.—Lumber, lath, and shingles—Number of active mills reporting, etc.

State	Lumber Sawed: Quantity (M feet b. m.)			Per cent of increase		Per cent distribution		
	1910	1909	1908	1909 to 1910	1908 to 1909	1910	1909	1908
Washington	4,097,492	3,862,916	2,915,928	6.1	32.5	10.2	8.7	8.8
Oregon	2,084,633	1,898,995	1,468,158	9.8	29.3	5.2	4.3	4.4

Also page 6 of this document, which reads:

"Mississippi, also a yellow-pine state, retains third place, and Oregon, with a greater cut than ever, has advanced to fourth place, while Wisconsin, the leading state 10 years ago, stands fifth. The rise of Oregon has been exceptionally rapid. This state, which ranked twenty-third in 1899 and reported 734,538,000 feet of lumber, has increased its production since that time 183.8 per cent, the cut in 1910 amounting to 2,084,633,000 feet, by far the larger part of which was Douglas fir."

Also diagram of the "Lumber production, by states, 1910," page 7, giving the "Billions of Board Feet" in a table, showing Oregon fourth, and which reads as follows:

"Probably not less than one-fourth of the lumber shipped from Oregon and about one-fifth of that shipped from Washington goes by water, the larger part of it to California ports. Large quantities of lumber produced

in these states, however, are shipped directly to Australia, China and Japan, South America, Africa, Mexico, and Central America, in the order named, and a considerable amount to Hawaii, Alaska, and the Philippines. The Alaska trade, however, is decreasing owing to the erection of lumber mills in that territory.

"California, producing chiefly redwood and pine, reported in 1910 the highest production since 1907. This state also ships part of its product to non-contiguous possessions of the United States and foreign ports. The three Pacific Coast states, together with Idaho, supply the bulk of the timber required in the western half of the United States."

Also page 9, bottom of page, commenting on Table No. 3, the following:

"The rank in point of production of the five leading woods was the same in 1910 as in 1909, Douglas fir showing the greatest relative gain.

"For more than 10 years yellow pine has been the leading wood in point of quantity produced. In 1910 this wood furnished a higher proportion of the reported cut than in any other year except 1904 and 1909. Douglas fir, with a greater production than ever before reported, ranks second, as it has done since 1906."

Also page 13, under the subject "Douglas Fir."

"The estimated stand of Douglas fir timber in the United States is greater than that of any other softwood and more than the combined stands of all the hardwoods.

Its geographic range extends over 10 states, from Colorado and New Mexico westward to the Pacific Coast. Its best development and heaviest stands are found in western Washington, western Oregon, northern California, and Idaho."

Also Table No. 5, "Lumber, lath, and shingles—Douglas-fir lumber—Number of active mills reporting and quantity cut, by states: 1910."

Douglas Fir Lumber Sawed:

State	Number of active mills reporting	Quantity (M feet b. m.)	Per cent distribution.
United States	1,347	5,203,644	100.0
Washington	516	3,259,546	62.6
Oregon	452	1,714,462	32.9

"Washington produced more lumber in 1910 than any other state, and practicaly four-fifths of the amount was Douglas fir. Nearly two-thirds of the Douglas-fir cut was reported from Washington; about one-third from Oregon, and the remainder, amounting to less than one-twentieth, was divided among eight other states."

Also page 17:

"The 1910 cut of western pine was the largest ever reported, exceeding that of 1907 and showing an increase of 4.1 per cent over 1909. California, Idaho, Oregon and Arizona show a moderate increase in production from 1909 to 1910, while Washington, Montana, Colo-

rado, and New Mexico show a slight decrease," Oregon showing 180 mills actively reporting sawing western-pine lumber, quantity 209,636 feet board measure; per cent of distribution 13.4.

Whereupon witness testified that Defendants' Exhibit 349 is an official document issued by the Forest Service September 5, 1907, to which complainant objected to as incompetent, irrelevant and immaterial. Which said Defendants' Exhibit 349 was offered and received and is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness, upon re-cross examination further testified that he owns a small tract of land in Washington County, one the line next to Clackamas, in section 12, township 1 south, 1 west, close to the meridian, consisting of 28 acres of farming land. He supposes that it was timbered at one time, a good many years ago. A portion of the lands surrounding it, large bodies of it, is timbered at the present time. It has been logged off and is now cleared, and most of it was cleared when he purchased it. He owns the larger part of the stock of a corporation which owns a piece of land in Tillamook County, not far from the town of Tillamook. It is not a farm, it is a sort of waste land or burn. He has never seen it. He took a chance in buying it without seeing it, and does not know very much about it excepting that he had a man go on it and examine it. It is not dairy land. It has some timber on it, not a great deal. He didn't pay

very much for it, and thinks there is 80 acres in it. He is not putting it on the market to sell, but just letting it lie there. There is quite a dairying country around in Tillamook County, but he does not know as it is in that vicinity. There are dairying interests there in that county.

Whereupon, on redirect examination, witness further testified that there are no dairying lands on these timber lands of the company, and that these dairying lands in Tillamook County are down in the valley, around the town of Tillamook. It has been his experience on the land grant lands that all those portions of the grant that were suitable for agriculture or for dairying, or anything of that sort, were acquired by individuals soon after the grant was acquired, and while the grant was being sold, a great many years ago.

Whereupon, on re-cross examination, witness further testified that his last statement is from his observation in the field and from a study of the maps showing the lands that have been sold by the company or under contract. He could not tell by observation in the field when the land had been acquired, but could tell by observation in the field that certain lands that had belonged to the company were now under cultivation and had been acquired a long time ago. These lands were not timber lands.

Whereupon A. W. REES, called as a witness on behalf of defendants, being first duly sworn, testified that he is fifty-one years old, resides at Portland, Oregon, and is an employe of the Oregon and California

Railroad Company, and has lived in Oregon thirty years, with the exception of three years when he was in British Columbia and Washington. He has been in the saw mill business in the capacity of head sawyer and operated a mill from 1882 up to 1904 or 1905, and most of the time since, he has been in the timber business or cruising timber. Up to the present time, except in the last two or three years, he had charge of the Portland office of the Oregon and California Railroad Company. He is manager of the field work in Oregon for the company, and is a practical cruiser of timber lands.

Referring to Defendants' Exhibit 353, showing 16,-351 acres being east of Willamette Meridian on one sheet, and 31,907 acres west of Willamette Meridian on another sheet, witness testified that he cruised these lands, he believes, all within the last four or five years, and these lists were made up from cruise reports that he made that are now in the office, and they show the character of the land as shown by the reports, and show the present condition by township, range, section, county, and whether timber, grazing or agricultural, as shown by these reports, and they also show the condition of the land when denuded, as shown by these reports, to which testimony complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the character of the lands involved within the limits of the grant and to settlements thereon and public land entries thereof.

Whereupon witness further testified that these statements showing 7,124 acres in their present condition classified as timber lands, and 6,282 acres classified as grazing land, and 2,945 acres classified as agricultural lands, or 18 per cent of the total of 16,351 acres in their present condition as agricultural, are correct so far as his reports show and from his actual knowledge of the lands in the field, that is his judgment. The statement that when denuded there are 10,866 acres classified as grazing, and 5,485 acres as agricultural, and that the agricultural is 33.54 per cent of the total of 16,351 acres lying east of the Willamette Meridian, is correct according to his judgment, according to these reports. The statement showing 29,492 acres west of the Willamette Meridian, classified by him as timber, 2,295 acres classified as grazing, and 120 acres classified as agricultural in their present condition, or .376 per cent agricultural in their present condition, and when denuded 30,740 acres grazing and 1,167 acres agricultural, or 3.65 per cent of the total 31,907 acres, is correct according to his judgment.

Whereupon defendants offered and there was received in evidence these two tabulated statements marked "Defendants' Exhibit 353," there being no objection that the original reports from which these are tabulated are not produced, which exhibit is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness further testified that he had about two of each kind of these reports which he made

as a cruiser, with him, and producing three of such reports testified that he prepared Defendants' Exhibit 354, being three reports, and delivered the reports to the company, from actual cruises in the field made by him while in the service of the company as to these lands, and they are a fair representative sample of all of the reports made by him, upon which Defendants Exhibit 353 is based. These reports were made to the company to be acted and relied upon by it in the course of its business, and expressed his best judgment at the time they were made. F. A. Elliott, S. A. Carmichael, T. J. Cronin, C. A. Cavill, M. F. McGown, John McDonald, Ben Pack and Wm. W. Penoyer, who were cruisers for the company, made reports to the company in the same way, and these reports are in his custody as custodian of the records of the land department at Portland. He cannot explain how it is that Defendants' Exhibit 354 has two different forms, or how these forms happened to be used or adopted, as they were given to him to use by the San Francisco office, and some three or four years ago they changed the form of report, sending him the brown colored form S-5649 to be used in the future in place of the other form. Defendants' Exhibit 261, showing the cruise reports of McLeod and McLennan are substantially the same as this brown colored form. In preparing Defendants' Exhibit 353, he used the classification that is given on the form with reference to certain sections cruised, and did not have on these forms a classification for land that is barren or rocky, or totally unfit for any purpose, as a separate classification. That

character of land is classified as grazing land. Lands are either timber, grazing or agricultural in their original condition, under these reports, and when denuded they are grazing or agricultural. He included in grazing any lands, if there were any, that might be rocky, barren, or without any soil, or timber, or any value. Everything is grazing that is not shown as timber or agricultural land. His instructions were to classify the land as timber, grazing or agricultural lands. The timber lands are lands chiefly valuable for the timber, the stand of merchantable timber thereon. Agricultural lands are lands of very little timber and which could be plowed and cultivated, in quarter sections or less, used for agricultural or orchard purposes, and that would yield a reasonable return on the investment. All other lands are classified as grazing lands, regardless of whether they have any value for grazing purposes or not. That is to say, if they were neither timbered or agricultural, they would be classified as grazing.

Whereupon defendants offered and there was received in evidence Defendants' Exhibit 354, which is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness further testified that Defendants' Exhibit 355, purporting to be a tabulated statement showing the cruising of F. A. Elliott, is a correct statement.

Whereupon defendants offered said Defendants' Exhibit 355 in evidence, to which complainant objected

as incompetent, irrelevant and immaterial, and that the witness is not competent to identify the accuracy of these cruises, but no objection is made that the defendants do not produce the original reports.

Whereupon said Defendants' Exhibit 355 was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness further testified that S. A. Carmichael is a timber cruiser, who worked for the company a number of years, and that Defendants' Exhibit 356 was made from these cruisers' reports made by Carmichael to the company in his custody, and to the best of his knowledge that exhibit shows correctly what the cruise reports show. He caused these tabulated statements to be prepared under his supervision. A few of the reports he prepared himself, he actually participated in the work, and saw that the others were correctly done.

Whereupon defendants offered in evidence Defendants' Exhibit 356, to which complainant made the same objection as last above. Whereupon said exhibit was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness further testified that T. J. Cronin, C. A. Cavell, M. F. McGown, John D. McDonald, Ben Peck and Wm. W. Penoyar, whose names appear on tabulated statement marked "Defendants' Exhibit 357," were timber cruisers who cruised the timber for the

company at various times. Each of them made his report to the office, and these tabulated statements are correct reproductions of the summary of these reports so made, to the best of his knowledge and belief, and these reports are in his possession as custodian of the records of the company at Portland. These cruisers' reports were made in the usual and ordinary course of business, and these men were then in the employ of the company, and he believes they are all competent cruisers, they were supposed to be, and so far as he knows their work was satisfactory.

Whereupon defendants offered in evidence these tabulated statements marked as "Defendants' Exhibit 357," to which complainant objected as incompetent, irrelevant and immaterial, but made no objection that defendants did not produce the original reports, which said exhibit was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness further testified that these cruisers' reports upon which Defendants' Exhibits 355, 356 and 357 are based, were all made upon substantially the same forms as Defendants Exhibit 354, and Defendants' Exhibit 261, possibly there were a few of these examination reports made by land examiners instead of by timber cruisers, which were used, although not many of them. Defendants' Exhibit 358 is the form that was possibly used by some of these cruisers. These forms were for making special reports on certain tracts of land that were to be examined for various purposes,

and were not generally used in the general cruising. This form, Defendants' Exhibit 358, has grades of agricultural lands, first grade, second grade and third grade —and timbered or wooded land, cultivation, care and extent, grazing land, first grade, second grade, third grade. They were used for special examinations of tracts of contract land that had reverted, or any other special examination.

Whereupon defendants offered and there was received in evidence as a representative sample of a report of a land examiner, Defendants' Exhibit 358, which is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness further testified that he does not think that these Defendants' Exhibits 343, 344, 353, 355, 356, and 357, which are based upon cruisers' reports in his office, include any lands cruised prior to April 18, 1906, reports of which were made before the fire and burned in the fire. The cruisers' reports of the company which were in existence prior to April 18, 1906 were all taken to San Francisco, and he presumes were burned in the fire, that has been his understanding. These tabulated statements would show only a very small portion of the lands actually cruised based upon existing records, and do not show all of the lands which he cruised from time to time since he became an employe of the company, down to date, nor very few of the lands cruised by F. A. Elliott, and there were quite a number of cruisers at various times whose reports the company does not have; cruises that were made previous

to the time the records were taken from Portland. The cruisers' reports of N. E. Britt, for instance, were sent to San Francisco along with the others, and he presumes were destroyed in the fire. The cruisers reports made by F. A. Elliott, other than these showing that he cruised apparently about 2,000 acres, were sent to San Francisco, and these tabulated statements only show a portion of the total cruises of these parties that did work before the fire of April 18, 1906. He has prepared or caused to be prepared a map which reproduces on the map, the location of the various tracts cruised by these various parties whose reports are tabulated in these exhibits, and Defendants' Exhibit 342 is such map, and that map, he believes, to be substantially correct. It may include a few lands or tracts not shown in the statements but does not include any lands that have not been cruised, as shown in these colors. The 880 acres which he cruised in Multnomah County is in the eastern part of that county. The 875 acres of that total of 880 acres classified by him as timber, is Douglas fir, generally called yellow or red fir, and the lands are chiefly valuable for timber. The five acres classified by him as agricultural, is land that has very little timber on, level enough to farm and plow, and fairly good soil. These parcels or acres classed by him as agricultural in their present condition, are generally situated along the creek bottom, while the other land extends back on the hillsides, although there are a few sections where it is bench land, level benches, with fairly good soil and level enough to

cultivate and not too many rocks. These agricultural parcels are isolated and widely separated from each other. His classification as grazing when denuded, includes all lands that are not classed as agricultural land. It might be worthless land, or any land not classed as agricultural land. Some localities make fairly good grazing land after they are denuded of the timber. Other localities are very poor, and there are some places where the lands are classified as grazing lands that have no apparent value for any purpose on account of being very rocky and no forage of any kind. A timber eighty, where the eighty is covered with an excellent stand of merchantable saw timber, he classifies as grazing after the timber is cut off and becomes what is called logged-off land. Usually one would have to do considerable clearing of brush, of lands that can be used for grazing purposes. The brush grows up very quickly after the lands are logged-off and they would have to be cleared to a certain extent, not to the extent of taking up the stumps, but to the extent of clearing it of brush and logs. There is a great deal of that land that could not be used at all for grazing. When the merchantable timber is logged off of these tracts of land, there is considerable of timber left of inferior quality, not suitable for milling purposes. The lands which were cruised in Clackamas County generally lie along the Clackamas River, where they include the bottom lands along the river, extending back onto the hills to some extent, but they cover lands that have more than an average of agricultural land. The

difference in the amount of grazing lands in the percentage in their present condition in the counties of Multnomah and Clackamas, as compared with the counties of Douglas, Josephine, Jackson and the other counties named in his statement of lands lying west of the Willamette Meridian, is, that in Clackamas and Multnomah there are large burns, considerable of that land examined was on burned sections that had no timber at all, or scarcely any, and these burns were generally classified as grazing lands, A large burn is in 1 south, 2 south—5 and 6 East, Clackamas County, Oregon, of rather high elevation as to a considerable portion, probably 2,000 feet to 4500 feet. These burns are usually covered with dead snags, trees that were killed years ago, and the trunks fallen down to the ground, and the ground usually covered with brush. These burns are generally covered with different kinds of brush, briers, and some wild grasses, and some places there is fairly good soil, and a great many places it is very rocky, and in most of the old burns the soil is very gravelly and unproductive. He cannot tell exactly when he began work for the company, but it was ten or twelve years ago—he knows it was more than ten years ago. He began in the capacity of timber cruiser, and before he commenced to cruise for the company he had been in the saw mill business, worked in timber for a number of years, ever since he was a grown man, the greater part of the time. He has done considerable cruising in Washington County, probably from one-half to three-quarters of the land that the company owns in that county,

and he thinks he has cruised at least one-half of the unsold lands of the company, inuring to the company under both grants, in that county. He has cruised nearly all of the lands in Multnomah County. He cruised with one other cruiser at one time, when they would take alternate sections, and he had been in Multnomah County at various times to cruise other sections. In Yamhill County, he presumes he has cruised only about seven or eight sections, but has examined quite a number of tracts. When he made an examination he would go on to the section and might go once or twice across it, making a general report of the character of the land, and not make a cruise of the timber. These examinations would enable him to tell in a pretty accurate way the character of the timber as well, or practically as well as to make a cruise of the timber. He thinks he has seen every section in Yamhill County that the company owns, but he has not made reports on every section. He supposes he has cruised about fifteen or twenty sections in Clackamas County, but has examined a considerable portion of the lands. There are some lands in Clackamas County, considerable, he has never made any report on, but went through and looked over in a general way, to get an idea of the character of the land. He has cruised about one-fourth of the sections in Polk County, but is familiar with practically all of the lands in that county. He does not remember of cruising but a few sections in Marion County, that is, making timber cruises, but has examined the greater portion of the lands in Marion County.

Referring to the map, Defendants' Exhibit 342, in the preceding testimony and in his subsequent testimony, he could tell better which lands he had examined and cruised, than from memory. He cruised about one-fourth of the lands in Lincoln County. He does not remember that he examined any lands in Lincoln County excepting in 13 South, 8 West, and two or three sections on the south side of 12 South, 8 West. Defendants' Exhibit 342 shows the boundaries of the various counties. He has cruised about one-third of the lands in Benton County. There were three cruisers there together, taking alternate sections, when he worked there. He does not remember of having made any special examinations in Benton County, although he has been through that county a number of times, and over the lands at different times. He has actually cruised only a small portion of the lands owned by the company in Linn County, and he does not remember of having made reports on more than probably ten per cent of the lands in Linn County. He has been over the lands in Linn County pretty thoroughly at different times. At one time he had a gang of cruisers in Linn County on the Santiam River. They camped at 12 South, 3 East, began at 11 South, 3 East, in the upper northwest corner of the township, and did some cruising there. By examining a piece of land he means that he has gone to the land and made an examination for some special or other purpose. Some times it would be to determine whether there were any improvements on the land, and he would then make a formal report

of such instances, such as has been introduced in evidence as one of the exhibits in his testimony. There was a party of three cruisers, of which he was one, in Lane County which cruised Township 15 South, Ranges 6, 7, and 8 West; 16 South, 6, 7, and 8 West; 17 South, 7 and 8 West, at one time. He presumes he cruised one-third of the land. He cruised considerable of the lands in 15 South, 1 East and 1 West; 16 South, 1 East and 1 and 2 West; 17 South, 1 and 2 West; some few sections in 20 and 21 South, 1 West, and cruised, or was actually with a party of other cruisers, of which he was a member, more than half of the total of 299,606 acres in Lane County, but it would be pretty hard to tell what proportion of this total area, outside of what he cruised or participated in cruising, that he examined or made an examiner's report. He can remember a great many sections that he made some report on. He knows the character of and has been over the greater part of the company lands in Lane County. He thinks he has cruised or has been in a company with cruisers in which he participated, of about one-eighth of the 616,843.14 acres owned by the company in Douglas County. He had made examiners reports only of a small portion of the lands in that county. He has been over about all of the balance of the land that he did not actually cruise or examine. He thinks he has been in every township probably, over the lands wherever there is any road or trail, and a good many places where there is not, and he can tell the character of most of the lands. He never did a great deal of cruising of the company lands in

Coos County. He has been over the greater portion of the company lands in Coos County. He has been over the company lands in Curry County, but never made a cruiser's report of the company lands in that county. He is acquainted with the character of a greater portion of the company lands in Curry County, he thinks. He has only cruised a very small portion of the company's lands in Josephine County. He has been over them very often, and made quite a number of reports of various kinds in special ways on different tracts. He was with a party that cruised six townships of the company's lands in Jackson County, and there are three sections, he thinks, upon which he made reports, and he is acquainted with the greater part of the lands of the company in Jackson County. He has actually cruised or been with a party of cruisers and participated in the work of cruising all of the lands of the company in Klamath County. He presumes he has cruised, or been with a party who has cruised one-fourth of the lands in Columbia County, and has been on the greater part of the balance of the sections in that county. He does not remember that he ever made a cruiser's report on any lands in Tillamook County, but he has been generally over the lands in that county belonging to the company, enough to have a fairly good idea of the character of the land, and can tell pretty nearly what they are. The lands that the company retained there are generally pretty rough, and a part of these lands is heavily timbered, and their chief value is for the timber, he would say, the timber land. Taking the entire grant over which

he has examined, in its present condition, he believes that not over four or five per cent of it, is suitable for agriculture, and he thinks about seventy-five per cent of the total area of this land grant in its present condition, in his judgment, would be classified as timber and chiefly valuable for timber only. He would say that about twenty per cent of this total grant in its present condition, in his judgment, would be classified as grazing, including old burns where there is some soil and timber but not suitable or valuable for timber, and including also lands that are rocky, barren or unfit for any useful purpose, and making three classes, timber, agricultural and grazing. He may have the timber estimate too high, he does not know, but that is approximately correct, he thinks, as nearly as he can tell. There are lands, if the timber is cut off and cleared, that could be used for agricultural purposes, lands that are level enough and soil good enough. From his knowledge of the grant, such lands that could be thus cleared and grubbed and made available for plowing after the timber is removed, that would be classified as agricultural, would be a pretty small per cent, especially a small per cent that the value of the land would justify the cost of clearing. He has made some inquiry at different times about the cost of clearing, and has cleared a little bit of land himself. There is a great deal of this land where it is heavily timbered that he does not think could be cleared for less than $100 an acre, that is, cleared of stumps, and some of it much more than that. He presumes there are places where it might

cost $500 an acre to clear an acre of land, but he would place the general cost for clearing timber lands at from $100 to $150 an acre; it would be above $100 an acre, the average over the grant. In some places in the Willamette Valley, he thinks, good agricultural land can be purchased for that price, clear, or comparatively clear of all timber. He only knows by hearsay and what he knows of land selling for as to the range of prices of agricultural land five or six miles away from cities, convenient to transportation, in the old settled part, say in Marion and Yamhill counties. It can be bought from $50 to $150 an acre.

Defendants' Exhibit 362 was tabulated from Defendants' Exhibits 343, 344, 351, 353, 354, 355, 356 and 357. It is a compilation from these other exhibits. These exhibits, including Defendants' Exhibit 362, are based upon cruisers' reports in his office. They do not pretend to cover or include any cruising made prior to April 18, 1906, reports of which were destroyed in the fire. They include practically all the cruisings made since that date which are in his office. There are a few that were missed in making up the statements, but the acreage is approximately correct; fractions are dropped sometimes. Defendants' Exhibit 362 is substantially correct, and Defendants' Exhibit 342 is correct, he believes, although some places where more than one cruiser would cover more than one section, the coloring on the map could not show both. It showed the last cruise made. He did not discuss with Elliott what his best testimony would be, or in any way influence Elliott directly or indirectly as

to his testimony, and there was no promise on his part directly or indirectly expressed or implied to induce Elliott to testify, and none by anybody else to his knowledge. Oswald West was Governor at the time Elliott was appointed State Forester. He is not acquainted with Buxton of Forest Grove, but believes that he represents the Oregon State Grange as a member of the Oregon State Board of Forestry. Geo. H. Cecil is a member of the United States Forestry Service. It is his opinion, but he is not sure that George W. Peavy represents the Forestry Department of the Oregon Agricultural College. The Oregon and Washington Manufacturers' Association is made up of timber and mill men of Oregon and Washington. The Oregon Forest Fire Association is an association of timber owners of Oregon. The Oregon and California Railroad Company is not a member of this association, or of the Oregon and Washington Lumber Manufacturers' Association, but it maintains its own fire patrol, excepting in one or two places, where the company has a joint patrol with other people.

Whereupon defendants offered and there was received in evidence Defendants' Exhibit 362, which is hereinafter set out and described and made a part of this statement of the evidence and identified as such.

Whereupon witness further testified that he is not acquainted with R. G. Balderee, but knows he is one of the intervenors or persons claiming to be intending purchasers of some of these unsold lands of the company.

Defendants' Exhibit 363 entitled "Map of the State

of Oregon published by the J. K. Gill Company, Portland, Oregon," is the best map he could get of the State of Oregon. The colors traced on Defendants' Exhibit 363 correctly outline the two grants, with place and indemnity limits.

Whereupon defendants offered and there was received in evidence Defendants' Exhibit 363, which is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness further testified that Defendants' Exhibit 363 is as clearly correct as any map that is published, and the map shows a fairly accurate location of the lines of railroad of the Oregon and California Railroad Company, Southern Pacific Company, Oregon Electric Railway Company, S. P. & S. Ry. Co., and O-W. R. & N. Co., and other lines, and nearly as actually constructed and operated. The Pacific Railway & Navigation Company, running through Hillsboro by way of Butxon and Nehalem River, to Tillamook Bay and Tillamook, is in operation at the present time. It was completed in the winter of 1911 some time, but he does not remember the date. The hatched dotted lines show proposed railway lines. At the time this map was published, the Oregon Electric is shown as a proposed line from Salem to Albany and as far south as Eugene. This has been constructed and opened for traffic very recently, if it is open at all; he is not certain that it is. Its completion was celebrated recently at Eugene, on October 15, 1912. The road indicated by dotted lines from Springfield to be constructed by the Oregon and Eastern

to Klamath Falls to connection with the constructed line at Klamath Falls, is in operation from Springfield to or above Natron, and under construction from there on to Klamath Falls, and is a mountain road part of the way. The road marked "P. and E. Railroad," from Medford in Jackson County, is in operation from Medford to near Butte Falls. The proposed railroad from Drain down the Umpqua River to Marshfield, has not been constructed. It was attempted to be constructed by the Southern Pacific Company, but has been abandoned. The Willamette Pacific Railroad Company, an affiliated or subsidiary line of the Southern Pacific Company, is constructing a line from Eugene westerly to the coast, down the Siuslaw river, in what is known as the Siuslaw country. The Corvallis & Eastern Railroad shown on this map from Newport or Yaquina Bay, through Corvallis, Albany, on to Mill City, or a point just east of Mill City, is in operation. There is some level land along the creek around Mill City, with mountains on each side. The character of the country is generally mountainous, with timber growth. He is not certain if that timber growth extends further than Detroit, if so far. That appears to be about ten or twelve miles east of the eastern boundary line of the 30 mile or indemnity limits of this grant. The general character of the country as to quality of timber in that section is good yellow and red fir.

Whereupon on cross examination, witness further testified that he marked these boundary lines shown on Defendants' Exhibit 363, showing the limits of the O. & C. land grant, but these limits were not traced on that

map prior to any work done by him. The only thing that he had to do with the preparation of the map was the marking of these limits, of the boundaries of the grants, and re-tracing the line of railroad of the Oregon and California Railroad Company. That is a stock map purchased from J. K. Gill & Company. He looked the map over carefully and considered it as good a map as there is published of the State of Oregon. He thinks that the line of road leading from Tillamook mentioned in his testimony, is recognized as being a part of the Southern Pacific Railway System. The proposed road leading from Eugene to Marshfield, is said to be a part of the Southern Pacific System, and the work has recently been started and they are doing work there now, but he is not able to say how far; the actual construction has been going on less than a year. The road from Springfield around to Klamath Falls, he believes, is what is commonly termed a cut-off of some kind, and is reputed to be a part of the Southern Pacific System from Springfield down to Klamath. The road running from Eugene to Springfield has been in operation for many years as part of the Southern Pacific System, but there is another branch of the Southern Pacific Company from Woodburn to Springfield, which has been in operation for a number of years as part of the Southern Pacific System. The road leading from Albany through Gates and Mills City, commonly termed the Corvallis and Eastern, is said now to be a part of the Southern Pacific System. His knowledge of the ownership of all this road is by common repute and by his connection

with the Railroad Company and riding over the railroad lines.

In cruising lands he generally used what is called the "double run" cruise; that is, running twice through each forty acre tract, making his count of two acres on each cruise, giving four acres in a forty acre tract, and making the estimate on that. A timber cruise is approximate always. In Southern Oregon where the timber is more scattering, he often made a tree count, that is, count all the trees on the forty, but the general method as described by him, applied more to Northern Oregon, to the Douglas fir district. Grazing land includes all land that is not classified as timber or as agricultural land, whether it has any special value for grazing purposes or not. Some forms of his reports have three different grades of grazing lands, as good, fair, or poor, but these are examiners' reports instead of cuisers' reports. They use examiners' reports when making special examinations for any certain purpose, where they do not care for a cruise of timber, and he presumes it would be used where there was an application to purchase agricultural lands, if they had such application and were making examinations for that purpose, no doubt he would use the examiners' report. It goes a little more into detail than the cruisers' report does. The examiners' reports contain no blanks for estimates of the amount of time on the land, or for timber cruisers' reports. He does not remember when they began using these examiners' reports, but thinks it has been about four years. They had two or three different forms of examiners' blanks prior

to the time they began using the present blank, different from timber cruisers' blanks. He does not remember that they had any blanks for making reports at the time they used the book form. This book form was the only one used, that he remembers of. There is some fairly good grazing land within the limits of this grant, but the amount is very limited. There is a large burned area in Clackamas County. This is usually very rough land, covered with dead trees, down logs, overgrown with brush, and would be very expensive to clear, and it is a high altitude. Some of it at an elevation of 4500 feet. One place that he remembers of, according to the aneroid, is 4700 feet, and he would judge the minimum altitude to be 1500 or 1800 feet. There are several townships that are entirely denuded or partly denuded of timber in that burn, but the fact that that land has been burned over would not alone render it incapable of cultivation. In making these cruises shown on Defendants' Exhibit 342, there would be several cruisers who would go into some township or locality, and one of them would take one section, another would take another section, and in that way they would cruise the land, and usually they had a compassman to run the lines or make the location for them. He does not mean to say that he could state accurately the character of every particular tract of the grant in Lane County, but generally speaking he is familiar with the lands in Lane County, and he thinks he could state accurately the purposes and uses to which these lands could be applied, judging from whether other lands are being used of like character and what they

are being used for, if used at all. That is not what he bases his opinion on altogether. There is considerable land that is too rough to be used for any purpose unless for grazing purposes. It would be pretty hard to take a township in Lane County and describe section by section the lands in that township, but there are some townships in which he can remember almost every section. Perhaps he could not recall every section in very many townships without referring to the plats or maps, or something. He was cruising this land at the time of the fire, and cruised some lands after the fire. A great deal of the land that he was over, was for making special reports of different character. The greater portion of these cruises have been made since 1907. He had cruisers at work engaged in cruising this land from 1906 to the present time, and has cruisers at work now, and has Bruce, McLennan and McLeod working now as cruisers, but no others at work now. McLeod is not cruising timber all the time, but is part of the time on other work than cruising.

Witness has not had a great deal of experience himself in farming in the last twenty years. He was raised on a farm until he was grown, and he has been around among the farmers a great deal in connection with this work. In the work he has got to go over the country and stop at farm houses sometimes. The farm he was raised on was in Vermilion County, in Ilinois, at the edge of the timber. The whole area there was prairie south of the timber where they were, and there was prairie north of the timber. The earliest settled portion in that

locality was not in the timber, they settled along the edge of the timber. The farms were usually along the prairie, but near the timber. Extending south from the timber, where he lived, there was no timber for a great many miles. He does not think that that land in this vicinity in Illinois, was ever covered with underbrush and timber at one time. It was covered with prairie grass—open prairie—as long as he can remember. He has been south of that place on the border between Illinois and Indiana, around Perrysville or East of Danville, and south, and a great deal of that was timbered country. He cannot say whether or not it has been cleared off and is practically all under cultivation at this time. He has not been there recently. He has farmed in Oregon at Newburg, Yamhill County, owning some land there and farming it one season, but does not remember the section, township and range. This was in 1882 that he owned that land; after that he had it farmed by other people. He had about seventy, or a little less than eighty acres. It was near Newburg, at a little place called Spring Brook, and the farm cornered at the station at Spring Brook, or within two hundred feet of it, lying west and north of Newburg, about two miles. It was part of the Heater Donation Claim. He has owned no other land excepting a small tract that he now owns, which he has farmed; it is outside of the city limits; they raise potatoes and garden stuff, and berries on it, but he does not hold it as a farm, but as an investment. He has been employed by the company and engaged in its land work something more than ten years.

Whereupon, on re-direct examination, witness further testified that the timber cruising method described by him, is generally used by all timbermen for a basis for purchasing or selling timber lands, and it is a reasonably safe guide to ascertain the value of the land. These examiners' reports referred to by him were for the purpose of ascertaining the particular character of any particular piece of land trespassed upon, or where the contract was forfeited, or where the circumstances required special investigation other than cruising.

Whereupon, S. C. BRUCE, called as a witness on behalf of defendants and being duly sworn, testified that he resides at Portland, Oregon, and is a timber cruiser, and has so resided since October 1911, and before that resided in Jackson County about seven years. He has been engaged in the business of timber cruiser for about eight years, for Standard Lumber Company and Fidelity Lumber Company of Newport, Washington, and in grading lumber sold by both of these companies. He has been employed by the Oregon and California Railroad Company since August 1907, examining lands and cruising timber, and he is still in its employ, engaged in that business, reporting to A. W. Rees, Manager of the Portland office, having charge of matters relating to the lands of the company. Defendants' Exhibit 342, shows the lands that he cruised. Whereupon defendants offered said map, Defendants' Exhibit 342, in evidence, purporting to show lands cruised and examined by S. C. Bruce, S. A. Carmichael, C. A. Cavell, T. J. Cronin, F. A. Elliott, M. F. Mc-

Cown, John McDonald, D. C. McLennan, L. D. McLeod, Ben Peck, William Penoyar, and A. W. Rees, showing in the legend a color for each of these persons, under promise to call each of the other witnesses, and particularly A. W. Rees, to show that the map correctly tabulates, and by these legends shows, the lands that these parties cruised.

Whereupon said Defendants' Exhibit 342 was received in evidence, and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified as such.

Whereupon witness stated that Defendants' Exhibit 343 shows the lands that he cruised, being a tabulated statement of such lands, showing a total acreage of 170,309 acres, and showing present condition of this acreage as, timber 134,312 acres, grazing 27,133 acres, agricultural 8,864 acres, and when denuded, grazing 132,669 acres, agricultural 37,640 acres.

Whereupon defendants offered said tabulated statement in evidence as Defendants' Exhibit 343, to which complainant objected as incompetent, irrelevant and immaterial. And it was agreed between the parties that this same objection should be considered as taken to all testimony of this witness relating to the character of the lands within the limits of the grants, settlements thereon, and public land entries thereof. Whereupon the same was received in evidence, and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified as such.

Whereupon witness further testified that this tabulation or statement, Defendants' Exhibit 343, correctly states the proportions of these lands and the classifications according to his reports as they were compiled and tabulated, and according to his examination as made in the field. He classified as timber lands that would have 100,000 feet or over to the forty acres, and he classified as grazing in the present condition, land that had no timber, and as agricultural in the state of nature land that was level enough to be tilled and land that was not too stony or rocky. Under the column "When denuded" and under the column "Grazing", showing a total of grazing lands examined by him when denuded, of 132,669 acres, there would be a certain per cent that was agricultural and a certain per cent grazing. By classifying land as grazing, when denuded, he means land that is level enough to be farmed or tilled, put into cultivation, after the timber has been cleared off and the stumps are grubbed and the brush burned, etc. He classified land as agricultural, when denuded, which would be level enough to work, to farm, for tillage, after the timber had been removed and stumps extracted. That is, if he found a forty that might have a very heavy stand of fir timber, but that was sufficiently level, that it could be plowed, he would classify that, as agricultural when the timber was denuded. If he found a tract of land that was rocky, or the soil of which, was not fit for cultivation or for agriculture, he classified that, as grazing when denuded. So that all the land that he examined or cruised was put by him into two classes

when denuded, one grazing and the other agricultural. He has not made any allowance for lands unfit for any kind of vegetation. There is a certain portion of these lands classified by him as grazing lands, which he supposes would be too steep for any kind of crops, but he thinks it all could be used for grazing. Some portions of this grant in Jackson County, is worthless on account of rocks and chaparral. The general character of these lands in Coos County was that they were all heavily timbered. In order to put these lands into the class of grazing lands, the timber would have to be all removed, logged off and seeded down, if there was not sufficient grass there for grazing. In spots, there is grazing in these Coos County lands. There is wild pea vine.

Q. What you mean, then, as I understand you, is, that if the timber is cut down, and the brush and debris burned after it is logged off, and sowed to grass, grass seed, that there would be some sort of grazing that could be had on these lands?

A. Yes, sir.

Q. Mr. Booth has testified that that would be the condition of a certain per cent of the lands owned by the Booth-Kelly Lumber Company in the eastern part of Lane County, and that that would be the process by which the land could be made grazing. Is that the same classification (or the same understanding that you have of this definition) of grazing that you have made?

A. Yes, sir.

Whereupon witness further testified that in classifying 1285 acres of the total acreage cruised by him in Coos County, as agricultural when denuded, he means land that was level enough to be farmed and cultivated after the timber was taken off. By the 110 acres of this total area cruised by him as adapted to agriculture, he refers to lands generally on a bottom, somewhere along a creek, and would not be all together, but would be in small, irregular tracts, where there was no timber. The 110 acres in section 33, township 27 south, 10 west, is land that was on top of a bench of the mountain, was level, and there was no timber on it, and he classified it as agricultural in its present state. The 15,197 acres classified by him as timber land in Coos County, would go close to 40,000 feet per acre, which is a heavy stand of timber. The timber in the main, in Coos County is yellow and red fir, with some cedar. The timber in Marion County cruised and classified by him is yellow and red fir, and would probably go 25,000 to 30,000 feet to the acre. The land classified by him in Marion County in a state of nature as grazing, was open land, upon which there were fern and old snags in places. It had all been burned over years ago. In places, it is rocky. Where he thought it was too rocky to be classed as agricultural land or unfit for the plow, he classified it as grazing, so that this acreage of 3845 acres in Marion County, classified by him as grazing, was so classified if it was not timber or agricultural. Wherever there was soil suitable for agriculture, or land that was level enough for such, he classified as agricultural. If it was

not too rocky and there was no timber, he would call that grazing land. He made no class for lands that were absolutely worthless, but considered that to be a certain grade of grazing land, and he did that all through the lands in these counties that he examined, so that the grazing classification includes all the lands excepting those that are covered with timber, or that are agricultural. In this compilation of the total acreage of lands examined by him of 170,309 acres, he made three classes in their present condition, timber, grazing and agricultural, and these are the same lands classified into two classes, grazing and agricultural, when the timber is cut off, and he has made no class of lands that were rocky and unfit for any purpose. He has put all in as grazing land or agricultural. In making his reports of his examinations to the company, he used the regular cruise report blank of the form of Defendants' Exhibit 261, and in making his examinations shown in Defendants' Exhibit 343 he used the form Defendants' Exhibit 266, and filled out the blanks as indicated. In making out these reports he filled in these forms as nearly as he could in every particular, where there was a blank to be filled, and made out a report for each section that he cruised, and this would apply to all of the lands that are described in Defendants' Exhibit 343.

Whereupon defendants offered in evidence Defendants' Exhibit 343, which was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified as such.

He prepared Defendants' Exhibit 343, excepting copying, and he prepared the data from his reports, and it is a correct reproduction of the facts stated in his reports as far as they are shown in the exhibit, and is correct. These original reports are in the office of the Land Department in the care of A. W. Rees.

Q. Suppose an actual settler, or any person should want to go on one of these quarter sections that you have classified as grazing when the timber is taken off, or in its present state where it is grazing, and for the purpose of making a living, supporting himself and his family, and his opportunity for that was confined to this quarter section, and he was required to make his living from the uses to which he put that quarter section for grazing purposes, state to the court whether or not such person, or any person under such circumstances, could support himself and his family on this quarter section of grazing land?

A. It would be doubtful.

Whereupon witness further testified that one head of stock could be supported upon about 20 acres of a quarter section of this grazing land as classified by him, confining the stock to that quarter section. That would be about eight head of stock for each quarter section. A man and his wife and family might make a living on eight head of stock pastured on 160 acres if the land was not too steep. He hardly believes a man and his family could make a living on eight head of stock supported on this 160 acres, although he never tried that kind of an

experiment and never saw anybody else that did. He has heard of people taking numbers of goats in the mountains back on the range somewhere, where they would probably have 1000 acres, but not on 160 acres.

Whereupon, on cross examination, witness further testified that he commenced to cruise timber in the fall of 1909 and devoted his time, until the present time, to cruising these lands. He personally cruised all of these lands reported in Defendants' Exhibit 343. He had different parties assisting him in that cruise, the others were compassmen, he was the cruiser, and these other men were working under him as compassmen and assistants.

Whereupon L. D. McLEOD, called as a witness on behalf of the defendants, and being first duly sworn, testified that he is thirty-six years of age, resides at Portland, Oregon, and is employed at the present time as a cruiser for the Oregon and California Railroad Company. He commenced to work for the company in 1908 as a compassman or land cruiser, mostly cruising land the first year. He was then off and came back he thinks in the latter part of 1909. Anyway he has been in the employ of the Company enough to make about four years. He has had practically the last three years' experience in cruising, ever since 1909. Before that he had been out with the cruisers running compass, and did considerable work alone in making examinations of different kinds before he commenced cruising. In making cruise reports he used standard blanks, such as Defendants' Exhibit 266. Defendants' Exhibit 266 consists of three reports

prepared by himself and three that would seem to be reports of D. C. McLennan. In making his reports on all of the lands for the company, he used that form of report and returned these reports to A. W. Rees, acting agent or manager in charge of the office of the Company at Portland, whose superior is B. A. McAllister of San Francisco. Referring to Defendants' Exhibit 344, purporting to show that he has cruised in all 65,681 acres and Defendants' Exhibit 342, he says that he supposes the map shows correctly the lands which he cruised, to which testimony of the witness complainant objected as incompetent, irrelevant and immaterial and it was agreed that the same objection should be considered as taken to all testimony of this witness relating to the character of the lands within the limits of the grants and settlements thereon and public land entries thereof. Whereupon witness further testified, that as far as checking that exhibit with the map, he had not done it. That was done under the direction of Rees, but he prepared the tabulated statement, Defendants' Exhibit 344, from his cruise reports and he would say that Defendants' Exhibit 344 is approximately correct; and by that he means in putting in the acreage he had not used the fractions; and aside from the fractional lots, as to the acreage, which covered a very few acres, the statement is correct. The classification in timber and grazing and agricultural, is based upon his judgment of the lands from an examination made in the field, and upon the form of report, Defendants' Exhibit 266, which he used. By the term timber, used by him in his classification, he included lands that were

more or chiefly valuable for timber than for grazing or agricultural purposes. Lands that were classed as "agricultural" in a state of nature, were those that could be cleared and cultivated. Often lands were classed as agricultural lands, the value of which would not justify the cost of clearing. Agricultural lands were such as could be cleared and cultivated. He had three classes of land in the present condition, one timber, another grazing and another agricultural. When these lands are denuded he has only two classes, grazing and agricultural. All denuded lands that could be cultivated, if cleared, are classed as agricultural, whether they were heavily timbered in the original state or not. The lands that were not classified as agricultural when denuded, were classified as grazing, regardless of whether they were fit for any purpose or not. He has not made any classification of lands other than grazing that are unfitted for any purpose. In Clackamas County, according to the classification made by him, in their present condition, there is an area of 16,358 acres of timber lands, and 31,297 acres of grazing lands in a state of nature. Practically all of that country has been burned over, leaving spots of timber in the lower lands, and high benches, where it was damp and moist, and the grazing lands have been burned over. The timber has been destroyed, and some of the lands there that are classed as grazing, are really too stony and steep for any purpose. In the 4238 acres in Clackamas County classed by him as agricultural, in their present condition, are lands that could be cleared and cultivated, or at least level enough to clear and cultivate. In the

second classification of grazing when denuded, of 44,138 acres in Clackamas County, there is included a part of the timber lands, when denuded, and a part of that old burn that has been classified as grazing. There is a small per cent of these lands that would be grazing under present conditions, at this time. A greater part of it, before it would be of any great value for grazing would have to be cleared and seeded, and some of it classed as grazing, could not be made grazing under any conditions, because it is too steep and stony. Some of it is mountains of rock. The increased classification of agricultural land from 4,238 acres in a state of nature, to 7,755 acres when denuded, results from the lands that would be cleared where too heavily timbered to be agricultural without clearing the timber away. He supposes he has a general knowledge of the cost of clearing these timber lands and it would cost anywhere from $75.00 to $500 an acre. There is quite a difference as to the cost of putting these so-called grazing lands, where they are capable of being made grazing, either by cutting the timber off, or cutting the brush off and burning it, and seeding it into pasture, but he would judge it would run anywhere from $10.00 to $75.00 an acre approximately. He does not mean where he would grub the stumps off the land for grazing purposes. If a person was going to clear it, though, and cut the brush off and burn it and put it in good shape for grazing or for pasture lands, it would cost considerable to put some of that land classified as grazing land, and that would produce grass; some of it he would say would cost $75.00 an acre, even for grazing purposes.

For a man to log off the land that was heavily timbered, then run a fire through it, burn up the brush and the rejected saw timber, timber that was not fit for logging, then go over it by hand, and sow the grass seed in the ashes, it would make grazing, but it would not be nearly so good as if one went over it and burned all the logs. It is hard to burn things off clean with a fire that way, without slashing. There is considerable timber left, as a rule, when these lands are logged off for commercial purposes. The timber left is too small to pay for logging. There are a lot of logs and tops of trees left in the ground after logging, and there is a certain percent, chiefly unsound or punk trees, left standing, depending upon how much there is that would be unsound.

"Q. Now, suppose a man were to go out there in this country on any of these lands that you have cruised, and examined, with his wife and family, and was expected to make a living on 160 acres of these grazing lands, confining his herd or his stock and its increase to 160 acres that he would buy, what is the fact, if you know, as to whether a man could support himself and his family by such use of this land or any of it?

A. He could not do it.

Q. Suppose a man would go out there as a so-called settler, and get some of this best timber-land, a quarter section of it, which you cruised, and was expected to settle on the land and support himself and family, if he had one, by living on that land, making a home on it, and it had commercial timber on it, what would you say

would be his ability to make a living?

A. He could not possibly make it.

Q. What would he have to do with this land covered with timber in order to get his money back, if he bought it, say, at $2.50 an acre?

A. He would have to sell the timber sure.

Q. Well, would it be necessary for him to live on it, to be an actual settler, in order to sell the timber, or could he come to town? If he had a quarter section out there worth $10,000, for the timber, he could sell it, couldn't he, without being a settler on it?

A. Yes, if he had a deed to it.

Q. That is what I mean.

A. Yes."

Whereupon witness further testified, that a commercial stand of fir timber in this state, considered sufficient to make the land chiefly valuable commercially for timber, depends a lot upon logging conditions and the amount of timber adjacent and how large a body of timber one has. The 6.77 per cent, shown in Defendants' Exhibit 344, means that there is 6.77 per cent that could be made agricultural land, or could be cleared and used for agricultural purposes rather and that it is not timber land at the present time. The 12.44 per cent under the column "When denuded," means, that there would be that per cent of the lands more valuable for agricultural purposes than for any other purpose after being denuded of the timber. Under that classification, the balance of

the entire 65,681 acres would, when denuded, be chiefly valuable for grazing, where the land could be used at all. When making these reports and making up this memorandum, he did it with the knowledge that there is really considerable of these lands that could not be used for any purpose and are really of no value for any purpose whatever. He has not undertaken to segregate in these compilations, a class of worthless lands. He would consider lands worthless that are really too stony or steep to grow grass, or to be used for any purpose to produce anything on. There is a considerable percentage of these lands, included in Defendants' Exhibit 344 in that class. He did not classify them in the reports, while he knows there are considerable. In this table, they are classified as grazing lands. Agricultural lands, other than this 65,-681 acres in a state of nature, is not all found in contiguous bodies. Those lands that are classified as agricultural lands, are generally found in patches along small streams or creeks and are usually in patches, though one might possibly find them all in one place in one particular section. They are, however, more generally scattered. Defendants' Exhibit 261, being a report prepared by him, February 13, 1912, is a typical illustration of the facts reported by him in all of these reports, depending on each a particular case. In his report of June 13, 1910, the SW¼ of Section 33, Township 1 South, Range 6 East, Willamette Meridian, Clackamas County, Oregon, containing an estimate of the total feet, board measure, 8,310,000 of the value of $9,422.50, is classed as timber and valuable for the timber on it. That value is possibly

a little above the average, compared in value with timber quarters generally, though he has seen quarter sections cruising from 15 to 20 million feet. The timber lands that he has been over, he would judge would cruise something like six or seven million to the quarter section, which is a fair average. Yellow fir has been estimated in this valuation at $1.25 per thousand feet, board measure, cedar at $1.25 per thousand feet and hemlock at 75 cents. This tract is two miles from Little Sandy, with favorable logging conditions and that would be a fair valuation, he thinks, to place on timber in that locality. Whereupon defendants offered in evidence Defendants' Exhibit 344, which was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified herein as such. Whereupon on cross examination witness further testified, that he has been cruising timber since 1909 and worked as compassman under Bruce, who preceded him as a witness in this case. Before being employed by the Railroad Company, he worked for the Portland Railway, Light & Power Company as a car conductor for about three years. Prior to working for the Portland Railway, Light & Power Company, he did some contracting and was in the wood business in Astoria, and he had some teams there, and he did the same thing in Seattle, and then he was in the cigar and tobacco business for awhile. After he sold out his outfit in Seattle he was in the mercantile business in Denver for awhile, that is, he sold mercantile contracts under the tontine line. He was born and resided on a farm and was in the farming busi-

ness until he was twenty-one. He was born and raised on a farm in North Carolina and came to Oregon about fifteen years ago. His timber experience has been mostly confined to his employment by the Oregon and California Railroad Company. In the South, his father was in the lumber business and interested in the mill business, but the experience of witness in that business was very small before he commenced to work for the Company. The classifications made by him is to show what the lands are mostly valuable for in their natural state. He has classified the lands as agricultural under the head "present conditions"; that is, that they are chiefly valuable for agricultural purposes in their present condition. Referring to such lands as can be tilled and cultivated, if cleared; their chief value is for their agricultural purpose, in their present condition, these lands that are so classified. Practically all of them may require clearing to render them susceptible to cultivation. His work as a cruiser commenced, he supposes, about the latter part of 1910, but he was working with Bruce in the latter part of 1909. Whereupon on redirect examination witness further testified, that he identifies Defendants' Exhibit 268, purporting to be a panoramic picture, or photograph, of certain places in Township 20 South, Range 1 West, taken by Mr. Gifford, April 3, 1912. He was present at that time and recognizes that the photograph is of the lands in that section, township and range. The photograph was taken from Eagles Point shown on the blue print, which is correctly located, with reference to the entire township. The snow peak Mount June, shown

in the photograph on the left, would be outside of the township. These photographs are correct reproductions of the scenes that they purport to record. He was present when the photograph, Defendants' Exhibit 269, was taken by Gifford, showing a point from which it was taken in township 4 North, range 3 West, Columbia County, and he saw the premises shown in that photograph and it is a correct reproduction of how it appears on the ground. He has been in other parts of the grant in other counties than those located in Columbia, Multnomah, Clackamas, Marion, Jackson, Polk, Lane, Douglas and Josephine Counties, shown in Defendants' Exhibit 344. He has been in practically all the counties in which the company owns lands and over the grant considerably in other work. He has been in very nearly every locality in the grant. There are a few localities in which he has not been. He has been over the grant quite thoroughly. He has not been over the lands in Jackson County as fully as he has in other counties, in fact, less in Jackson and Klamath than in any other counties, he believes. He has a general idea of the remainder of the unsold lands in Douglas County, other than those he actually cruised, because he has been over the county quite fully on the different roads leading through the county in different directions, and from his knowledge of the 616,843 acres in Douglas County, he is not prepared to say what per cent is chiefly valuable for timber as well as he would be as to what per cent of lands could be used for agricultural purposes. The lands are heavily timbered he would say. Roughly

speaking, from what he has been over in the grant, he would say a person would be putting it large to say that there was five per cent of these lands in Douglas County that in a state of nature were chiefly valuable for agricultural purposes. The lands in Coos County lie principally in the Coast Range, and he would think that five per cent, in a state of nature, would be agricultural lands. These lands in their present state are chiefly valuable for timber. The per cent of lands in Lane County that would be chiefly valuable only for agricultural purposes, would not run over six or seven per cent in their present state. He would not want to testify as to Linn County, because he had not been over the county as thoroughly as he had over some of the other counties. He has made several trips into Benton County at different places, but would rather not testify as to the lands in Benton and Lincoln Counties. He would judge that the percentage of lands that would be chiefly valuable for agricultural purposes in Marion County would run about seven per cent, and in Polk County about five or six, possibly seven per cent; and in Clackamas County about 6.77 per cent in their present state. He has been over Yamhill County quite thoroughly, but would rather not testify on account of not having examined the lands personally. He has been in Curry County, on several trips, walked 105 miles in three days to go in and out; that is an awful rough country, very rough and broken. The majority of these lands are not very heavily timbered. They are steep and rough. They are not very good even for grazing. These lands are principally on

the Rogue River in a rough country. The per cent of lands that would be chiefly valuable for agricultural purposes, in a state of nature, in Josephine County is rather small, because a lot of them, even the level lands there, are unsuitable for agricultural purposes. There is a granite formation there, and the larger part of the soil is like trying to make a rock produce and the per cent would run not more than three or four per cent, taking the county all the way through. In classifying 3,030 acres he had reported 10 acres that might be used for agricultural purposes, and that is a pretty fair sample he supposes. 1220 acres he classified as grazing in the present state, and in this classification he includes these granite, decomposed, lands. He has been over a considerable of Jackson County, but would rather not estimate the percentage. There is a very small percentage of it that is agricultural, even taking the lands that do not belong to the company, and include the lands that are down in the valley. There is not much valley land down in Jackson County. It is mostly mountainous. He has been over the county in a general way, in different places and parts of it he has been over he has found it very rough, broken and mountainous and there is a very large per cent of it that is not even good for grazing, what he would call good grazing. Outside of the work done on the cruise reports he has made several trips into Columbia, Tillamook and Washington Counties—in Columbia County four or five different times, probably the same in Tillamook and Washington. The unsold lands of the Company, in Columbia County are chiefly

valuable for timber. Of the lands which he has been over in Columbia County he has not seen any that he would think a person could possibly go on and make a living. The lands in Tillamook County are generally rough and mountainous and are chiefly valuable for their timber. He has been over some of the lands in Washington County and they are chiefly valuable for timber, if they have any value. Whereupon upon recross examination witness further testified, that besides making cruises he had looked after the lease and trespass work of the company, and that had taken him into different parts of the grant in different localities considerably and some of the lands a number of different times. By trespass work he does not refer to people who have settled on the lands, but to those who have cut timber from the Company's land. He does not refer to those people who have built houses, or cabins, or shacks. He has called on those people in regard to leasing and things of that kind, some who were living on the land at that time. It is the policy of the company to have those living on the land, lease it. He does not mean by trespass any reference to what has been referred to in this suit as the "Lafferty settlers" in Columbia County. He has covered each one of the legal subdivisions shown in Defendants' Exhibit 344 by a report that he submitted to the Company, and that covers all that he has cruised for the company, but not all that he has examined or been on. He would not say that this tabulated statement covered all the lands that he has cruised, because he has cruised some between the times he worked for the Com-

pany and when he was not in the employ of the Company, that is, not railroad lands, but other lands in the grant, within the limits, for other people.

Whereupon W. J. LANDER, called as a witness on behalf of defendants, and being duly sworn, testified, that he resides at Portland, Oregon, and that for the last thirteen months he has been Supervising Fire Warden for the State of Oregon over Douglas County, Oregon. He has lived in Oregon over twenty-five years, and his residence has been Roseburg, Harrisburg and Portland, Oregon. He has lived at Roseburg, Douglas County, about fifteen years and while residing there usually was in the land business; looking up land for himself part of the time. He has done some farming and became acquainted with that business in Pennsylvania, where he was born. He had a farm near Harrisburg, Linn County, but could not say definitely how long he had been engaged in the farming business, although several years in Linn County. He has had experience in cruising and examination of timber, for the purpose of ascertaining the character, quantity and commercial value of timber and is pretty well acquainted with the unsold lands of the Railroad Company in Douglas County. He has been over nearly all of Douglas County during the last twenty-five years, but in the last fifteen years he has been over the greater portion of Douglas County, both timber and farming lands and is well acquainted with the character of the lands owned by the Oregon and California Railroad Company, and other lands in Douglas County. He has examined tim-

ber lands on his own account, for himself and for the Oregon & California Railroad Company; he thinks he has been in the employ of the company as Fire Warden; thinks he was first Fire Warden in Douglas County, about thirteen years ago or more. He has been in its employ as Fire Warden until the last two years and is now acting as Fire Warden of the State Board of Forestry of the State of Oregon. Frank A. Elliott, State Forester, is his superior officer. As Fire Warden for the Oregon and California Railroad Company he patrolled certain districts, watched out for and extinguished fires, if he found them. His duties related to timber lands and his work was particularly active from June 1st to October 1st, of each year. In performing his duties as Fire Warden he patrolled a considerable portion of these lands each year quite thoroughly; that is, by going over the lands, following trails and roads. As Fire Warden for the State Forester, he has supervision of all fire wardens in that county, either State or privately paid wardens. This last summer he had ten federal patrolmen, five paid by the Railroad Company and five paid by the Douglas County Fire Patrol Association, which is composed of timber owners of lands in Douglas County. Some heavy timber owners that participate in this Douglas County Fire Patrol Association are the Musser Lumber Company, the Kribs-Pillsbury people, the Weyerhaeusers, Southern Oregon Company, and Neenah-Oregon Land Company, and several others. He has examined for the Oregon and California Railroad Company in probably all of the

western counties within which the grant lies. He made a good many examinations after the San Francisco fire, in regard to defaulted contracts of the company. The company seemed to have lost the contracts and he would go out and hunt these up. In making these examinations, he would go out on the land and see whether it was timber land or occupied, and when it was bought and whether the purchasers were still there, and he would examine the land as to its improvements, whether it was timber, or grazing or agricultural land and make a report. Whereupon the complainant objected to the testimony of this witness relative to the character of the lands within the limits of the grants involved in this suit and settlements thereon, and public land entries thereof, as incompetent, irrelevant and immaterial, and it was agreed that this same objection should be considered as made to all the testimony of the witness on these subjects. Whereupon witness further testified that these lands were lands that had been sold by the company under contract, but the parties had defaulted and forfeited their contracts. He found that the railroad lands that could be used for grazing or agricultural purposes were about all bought or appropriated in some way, that is, these tracts have been bought. There was no demand for these timber lands until recent years, except where there was a little mill along the Columbia River, or some other river. The character of the land that was in demand, belonging to the Railroad Company, prior to the time, timber became an object of demand, was such that it could be easily

cleared, or was cleared, little prairies that could be used for grazing purposes, situated mainly along the foothills and back intermingled along with other lands up the little streams, sometimes a little prairie along a sidehill that people could use for grazing, where there wasn't much timber. This land was generally bought by people that would want to go out and clear up a little home. Adjacent farmers would also buy them so as to have more pasture, or something of that kind. There was some inquiry for timber lands of this kind, such as these unsold lands in the foothills and mountains, about thirteen or fourteen or fifteen years ago. He has been over Jackson and Josephine Counties quite a good deal; and has been over the westerly part of Jackson County, but has not been further east in Jackson County than up Butte Creek as far as Prospect and Trail. He has never been in the Jenny Creek country and is not familiar with that country. He has not been very much in the Jenny Creek Country, very little. In Jackson County, the timber lands he only examined as to those defaulted contracts, or sometimes where there had been some depredations after the fire, when the company offered to sell grazing or agricultural land. He thinks it was just before this suit was started, the company offered to sell grazing or agricultural lands. Where people applied to buy those lands, sometimes the company would send him down to examine them. His acquaintance with the lands in Josephine County is about the same as in Jackson County, and he thinks he examined those lands that had been applied for, during the times of which he

speaks, as agricultural or grazing, where those applications had been made to the land department. He sometimes found them timber lands, but usually found timber lands and lands not fit for agriculture. He has been some over the lands in Washington, Polk, Yamhill, Benton, Lane, Clackamas, Linn, Marion and Columbia. He has not been in Klamath or Tillamook, but has been some in the Eastern part of Coos County. From his knowledge of the lands in Douglas County, and his acquaintance during the good many years that he has had charge of the fire patrol, he would say that, without clearing, the unsold lands of the company in Douglas County, in their present state, there would be very little, he does not know of any, that could be utilized for agricultural, horticultural or farming purposes. Probably three or four per cent of these lands, if they were cleared, would be valuable or could be used for agricultural or grazing purposes in Douglas County. Some of these timber lands that are heavily timbered, if they were cleared and grubbed, might be used for grazing or some agricultural purpose. Some of the burns might be cleared—there are burns in these timber lands—for probably $50 to $75 an acre, up to $300 or $400 an acre in heavy timber. The chief value of these unsold lands in Douglas County is for their timber.

"Q. Well, why wouldn't it be profitable for a person to buy these heavy timbered lands, or these lands that are more or less timbered, and sell the timber, and then clear the lands and put them under cultivation of some kind? Why wouldn't that be practicable and profit-

able to a settler?

A. It would not be profitable because you could go and buy land already cleared for less money than you could clear them.

Q. Now, suppose that a settler wanted to buy a quarter section of these timbered lands in Douglas County, at $2.50 an acre, and 160 acres in a tract, not exceeding 160 acres, and the company sold it to him and gave him a good title, and he went out there with his wife and children, if he had any, undertook to make a living on that quarter section, what would you say would be his chances of success?

A. He couldn't make a living on it. He couldn't clear enough of it to.

Q. Suppose the company had sold all of these timbered lands in this grant to so-called actual settlers, at a price not exceeding $2.50 an acre, within the last eight or ten years, since timber has become valuable, and had sold them in quantities not exceeding 160 acres, and these actual settlers had gone out on the quarter sections and built cabins, like some of these homestead settlers have done, what would have become of these lands, and what would have been their chief value after they had got title?

A. You could not find these settlers there. They would be just the same as on the even sections, where they have dug out little homes there. The people are not there—they have sold out to timber companies. They are not living there, as a general thing.

Q. Well, why do they not live on these lands?

A. Well, they wouldn't be profitable to stay there. They couldn't make a living on them.

Q. Then, if I understand you, these lands are chiefly valuable for the timber that is on them?

A. That is what I said awhile ago.

Q. And they are not capable of actual settlement?

A. No.

Q. Now, you may state whether or not that same condition obtains as to all of the unsold lands of the Oregon and California Railroad Company in the various counties where you have examined them?

A. The same condition prevails."

Whereupon witness further testified that he made the four reports, identified as Defendants' Exhibit 350. Two of these reports were on lands for which there had been applications to purchase at the time the company was offering to sell the lands. These are his original reports. The company was offering grazing and agricultural land and the applicants applied to purchase Section 19, Township 27 South, as such, but when he examined the land he found it was timber land. He made the examination in the report of March 14, 1912, for 113.19 acres in Douglas County, Oregon, which land was nine miles from Myrtle Creek. That is very fair grazing land and a little grass grows there. It was occupied by J. A. Worthington, and has been enclosed by him for twenty-five or thirty years, and he is the man

that owns the land around it. It includes his farm, but he made no claim. He had it enclosed and used it. The additional 40 acres in Coos County is as shown in his report on November 25, 1911, and the diagram showing a little tract marked in red color, and marked "open burn," he considered might be used for agricultural purposes. There was a man living on a burn east of that, and he had a slashing on this. That is on top of a high hill. When he burned his slashing, it burned the timber and brush, deadened it on that little spot, and that is about all the level land there is on it, and this man made no claim to the railroad land. The land described in his reports of October 6th and 7th, 1907, being in Section 15, Township 5 South, Range 7 West, Yamhill County, Oregon, excepting a 40, is very poor grazing land; just a little grazing there among the timber.

"Q. Now, Mr. Lander, you are a farmer, and have had some knowledge and experience of farming; what do you say as to the ability of a settler, or a man, with or without his family, going on 160 acres of this land that might be utilized for grazing purposes, and fencing this 160 acres and confining his stock and the receipts from the produce of that 160 acres to the 160 acres, being able to make a living?

A. Take land of that class, I remember that section very distinctly—there is very little grazing. He couldn't keep two cows in there in the summer.

Q. Now, from your knowledge of this grant, suppose these lands were cleared for grazing purposes, that

is to say, the lands became logged-off lands, and the stumps and brush were burned over, and a farmer or settler sowed timothy or other native grasses in the stump on the ashes, and in that way got some grass growing, but that he was compelled as a settler to only pasture this 160 acres, and support his cows or his horses, or whatever it may be on there, and attempted to make a living in that way, I will ask you to state whether or not that would be at all possible or practicable?

A. It would not be practicable.

Q. Would it be possible for a man to make a living in that way?

A. No, I don't think so. A very poor living."

Whereupon witness further testified, that the Southeast quarter of the Northeast quarter of Section 27, Township 27 South, Range 7 West, Douglas County, Oregon, examined by him May 24, 1907, and Section 19, Township 27 South, Range 7 West, Douglas County, described by him in his reports when classified as "timber lands" was so classified when all covered with timber. There was scattering oak trees and saplings on Section 27, and that is very poor grazing land. There is a little grazing on it. Section 19, of the same township, is mostly red fir, 30 inches in diameter, and would be merchantable saw-timber. Agricultural lands are such as would be comparatively level, as he classified them, they might be used for agriculture sometime, if it was level, if the timber was cut off. Section 19 is all

rocky and rough land. Speaking generally of the grant, it is very rough and broken, usually rocky in the southern part of the State. It is a kind of clay soil, not very good, in the heavily timbered belts of Douglas and Lane Counties. Whereupon defendants offered in evidence these four documents, as Defendants' Exhibit 350, which was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified herein as such. Whereupon witness further testified that he had never made any cruise for the company. He would sometimes state the approximate amount of timber on a section. He could not say how many reports of the character of Defendants' Exhibit 350, he has made to the company, but has made a good many. He was engaged from time to time in doing this character of work since shortly after the San Francisco fire, but did not work regularly. Sometimes he would work several months and be at some other work. In the summer time he took up the fire work. When he came to Douglas County twenty-five years ago, these unsold timber lands of the company were not worth anything, because there was too much timber on the land. Timber was not worth anything and it cost too much to clear it. He wanted to buy some himself, and he thought he would buy, probably, some agricultural lands himself, and he looked over the county pretty thoroughly, and didn't find any. He did not buy any railroad land from the company, from the fact it would cost too much to clear it. He has been down on the Siuslaw River, in Western Lane

County. Twenty-five years ago these timber lands in the Siuslaw country were not worth anything. He supposes they had a value, referring to the company's lands. These lands included the even sections and were not worth much, very little, because it would cost too much to clear them. Their chief value now is timber, and they are very valuable at the present time, he thinks. The highest price that he knows of any quarter section of timber lands in Douglas County, or in Western Oregon, being sold for is about $5,000 per quarter section. That was along the Coos County line, near the Coos River. He is not now in the employ of the company. Whereupon upon cross examination witness further testified, that he is now sixty-five years old, and was forty years old when he came to Oregon. He formerly lived in Monroe County, along the Delaware River, 90 miles from Philadelphia, before coming to Oregon. He lived near the Blue Mountains, near Delaware Water Gap. When he was a boy, he helped clear up a farm on the hills in Pennsylvania, in which State the land all had to be cleared, as far as he knows. Some of it was mountainous. But the mountains, take the Blue Mountains, those mountains they did not clear; it was rolling land that they cleared. He does not think there are a great many farms in the Alleghany Mountains, in the Western part of Pennsylvania. He has traveled on the Pennsylvania Road, between Harrisburg and Pittsburg, and never noticed from the train, farms along the mountain sides extending up to the top, along that line. There are little places there, but most of the good farms

are along the rivers in Pennsylvania. He was raised along the Blue Mountains, and they are about like the Alleghanies, but a different formation of soil. A good deal of the time since he has lived in Oregon, he has been buying and selling lands, farmed part of the time, but did not farm much for himself. His farm was a mile and a half from Harrisburg, he thinks in Section 14, Township 15 South, Range 4 West, but would not be positive. He took up a homestead, located in Douglas County, located in Section 8, Township 26 South, Range 8 West. His farm near Harrisburg was in the valley, and was prairie land. He owned other lands besides the farm and his homestead, but never farmed them. It is about thirteen or fourteen years since he first went into the employ of the company as Fire Ranger and has been engaged as such practically every summer, although not altogether for the company. He is now employed by the State of Oregon as Supervising Warden, under the State Board of Forestry. He has charge of the Oregon and California Railroad Company fire rangers, under arrangements with that company, and the State Board of Forestry. He does not know what arrangements the Railroad Company has made with the State Board of Forestry, except that he is instructed to assume charge of that work. He receives pay from the State and not from the Railroad Company. The Railroad Company is not in the Fire Patrol Association. The timber companies form the Fire Patrol Association. He ceased to work for the Railroad Company last May (1912) and has not been em-

ployed by it in any capacity since that time. He worked last winter for the company in the land office in getting out records of public land entries that had been made in the local land office. Sometimes he would go in the land office and look up the lands. He is the W. J. Lander that prepared, or assisted in preparing, the plat marked "Township 13 South, Range 7 West," shown on Defendants' Exhibit 264, and he prepared a number of these plats for use in this suit. Other than his duties as Fire Warden, prior to 1911 he was land examiner and would go out and examine and classify lands for the land department of the Oregon and California Railroad Company, under its manager, A. W. Rees. He always got his instructions from A. W. Rees, and did not deal directly with the San Francisco office. His directions were, to go out and examine lands. At the time he made these examinations this suit had not been commenced. They did not send him the applications to purchase at the time he made these examinations, before the suit was commenced. The company would say, that the land had been applied for, or something of that kind, and it would so state in its letter of instructions to him, and that is all the knowledge that he had with reference to that matter. He only acted as Fire Warden in Douglas County. His territory covered all of Douglas County. He had charge for some years of the fire patrol of the railroad company in Douglas County, but never had any patrols in Josephine, Jackson or Lane, or these other counties through which the grant extends. His examinations covered different

counties. His examinations might be in places from the Columbia River to the California line. They might be anywhere, any county where the company had lands. He thinks the company had other men employed in making examinations of lands besides himself. He might examine a piece of land in Jackson County, and the next piece of land might be in Washington County. He examined the land only after the San Francisco fire. He had no authority to approve any applications to purchase, or any leases. He would only send the applications to lease in and report the character of the land and send in the application. The leasing would be done afterwards. He knew nothing about the execution of the leases or the sale of the land. Sometimes in examining these lands he would put a value on them.

Whereupon D. C. McLENNAN, called as a witness on behalf of the defendants, and being duly sworn, testified, that he is of the age of fifty years, resides at Portland, and has resided in Oregon twelve years. His business has been cruising timber and foreman in different logging camps. He has cruised for the Oregon and California Railroad Company, and for different timber companies in Portland. Some of the companies he has cruised for are Finley Morrison & Son, J. D. Lacey & Company, E. W. Barnes and B. Giltner. He first cruised for the Oregon and California Railroad Company about six months in 1902, and his next work for them began December 1, 1909 and he has been with the company continuously since that time, and is now in its employ. He made the reports contained in De-

fendants' Exhibit 261. Whereupon complainant objected to the testimony of this witness, relative to the character of the lands, within the limits of the grants involved in this suit, and settlements thereon and public entries thereof, upon the ground that the same is incompetent, irrelevant and immaterial, and it was agreed that this objection should be considered as made to all of the testimony of this witness upon those subjects.. Whereupon witness further testified, referring to Defendants' Exhibit 261, that he classified this land in a state of nature as "timber land," "grazing land" and "agricultural land"; and when they were denuded of timber, he made two classes, grazing and agricultural. This classification was based upon those reports which he made in the field. He did not prepare Defendants' Exhibit 351, but it was prepared from his reports under the direction of A. W. Rees by some one of the office force. Speaking from memory, he would say that the acreage stated is correct. He did not have anything to do with the preparation of Defendants' Exhibit 342. He did his work in Columbia, Washington, Yamhill, Polk, Benton, Lane, Douglas, Coos and Tillamook Counties. He may have done a little in some of the other counties. He thinks he cruised in Tillamook County, as shown on Defendants' Exhibit 351, something over 10,000 acres, but he does not know about that, he never figured it up. The ordinary course of business in making these cruising reports, was, first, the location of the section, and then they usually would pace off 660 feet, called two tallies. Supposing they had located

the southeast corner of the section, they paced off two tallies west, and then paced right through the section, right straight north, till they got to the north line of the Section. Then they paced four tallies west, and paced through the other line of forties to the south side of the section; and so on through the section. In doing this they made a record, by keeping an account of the number of trees, or the number of feet on each two acres. He kept an account of the number of feet; when he paced a tally he would have two acres cruised. When they got four tallies, that is across a forty, one subdivision, they would have eight acres.

If the timber seemed to be fairly equally distributed over the forty, he would just average it up. When they had gotten eight acres figured up, what was on the eight acres, they would just multiply it by five. That gave them the forty acres; and so on through the section. Sometimes they measured the trees to get an average. This was one of the accepted ways of cruising timber for the purpose of ascertaining the merchantable timber standing on the lands. Where the timber was not equally distributed over the forty, supposing the timber is heavier on one side and lighter on the other, they would examine both sides a little more carefully, to get an idea of the amount of timber to the acre, and by this result one can figure it very closely. He made a memorandum of each tally of the amount of timber, and also noted in this memorandum the character of the soil, topography of the country, and everything relating to the character of the land. Whenever he crossed a stream

he would mark it. He also marked bridges or cliffs, or anything of that kind, so that he would have a fairly good description of the land when he was done. He would take note of the adaptability to agricultural uses, and the character of the soil and whether the land would be suitable for agriculture or grazing. There was no account taken of lands that are unfit for any purpose, but they are classified when denuded as either agricultural or grazing. If he found any land actually unfit for any purpose, it would be classified as grazing land. From his knowledge of the lands which he has cruised, he thinks the proportions as stated are approximately correct, with the exception of the grazing land. There is a lot of that, that is classed as grazing land, that is hardly fit for anything, but there is no provision made in the reports for saying anything about that. He thinks from his actual knowledge of these lands and from his cruising each 40 acres, that this exhibit is a fairly accurate estimate of the percentage that would be agricultural in the present state. As to its being agricultural in the present state, it requires a lot of clearing and such as that. This 30,098 acres, would be without any timber on it. The other is land that has no merchantable timber on it at present, and all that it is good for, is its value as agricultural land. It would be fit for agriculture, and there is no merchantable timber on it. There are stumps and logs and stuff of that kind, which are not valuable for anything. The acreage of agricultural lands from 5,958 acres to 30,098 acres would be increased by clearing. That is, the land is more valu-

able for timber than for agricultural purposes where there is a certain amount of timber and where there is only a small amount of timber it is probably more valuable for agriculture than for the timber that is on it. In a state of nature he found 5,958 acres that was more valuable for its agricultural uses than for any other purpose, but by denuding or clearing a little more he found 30,000 acres, having more or less timber on it, that would be more valuable for agricultural purposes after the timber was off. The 157,941 acres of grazing that would be left after the whole thing was denuded, would include lands that would be timbered and the timber would be cut off, logged off, and would also include any land whether it was rocky or otherwise. This 5,958 acres of so-called agricultural lands in their present condition, was scattered all over the land that he cruised, small pieces in different parts. They would be separated. Whereupon defendants offered in evidence Defendants' Exhibit 351, which was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified herein as such. Whereupon witness further testified, that he had been logging foreman in the east before he came here and had been logging foreman on the Columbia River and also for the Southern Pacific Company at Marcola.

"Q. Now, suppose, Mr. McLennan, that the company had sold these timber-lands, these unsold lands of the Oregon and California Railroad Company, to these so-called actual settlers, at $2.50 an acre, in quantities

not exceeding 160 acres, and had sold them since the timber became valuable, and had given them a good title, what would have become of these lands thus conveyed? What disposition would these actual settlers have made of them?

A. Why, if it was timbered land they bought, they would likely sell the timber; and if it was fit for agriculture, they would probably clear it up and use it as agricultural land, or as grazing land.

Q. Suppose the land had merchantable timber on it, and land should be sold at $2.50 an acre that would cruise and be worth $75 an acre, what would be the experience—what would become of the land? Would it go to timber investors, or would the purchaser live on it?

A. He couldn't live on it—couldn't make a living on it.

Q. Why couldn't he make a living on this for himself and his family?

A. There is nothing on it but timber and brush. He would have to clear the timber off in order to graze stock.

Q. Well, could he clear the timber off it if he went there to make a living?

A. No, he couldn't. No, he couldn't clear the timber off and make a living at the same time.

Q. As a matter of fact, what has become of the

even sections in this timbered country, that have been homesteaded or taken under the timber and stone act, so far as your knowledge is concerned from having gone through these woods?

A. Those homesteads have had a small piece of clearing on them, some half an acre, some three or four acres—very few of them any more than that—and they have been sold to timber companies, and as soon as the people have sold they have left, gone away. They are abandoned, and those clearings are all grown up with brush.

Q. What is the fact, if you know, in these mountains—the Coast Range and the Cascade Range, within the limits of this grant, wherever the land has been settled in this way by homestead claimants, or purchased under the timber and stone act where no settlement was required, as to who owns those lands at the present time?

A. Timber companies.

Q. Did these homestead claimants or homestead entrymen ever make any homes on these lands?

A. Why, they got to stay there as little as possible, but they don't make a living on these homesteads. They go out and work. If they have a family, they leave their family on these homesteads until such time as they get title to them, and then they sell out and leave.

Q. Did you ever know, in all your experience in

these timberlands, of a family living on these homesteads, as a class, continuously, enough to comply technically with the law?

A. After they get their title, they don't live on those lands, without it is some of those claims that are close in to the valley close to the valley, where they could graze stock or use it as agricultural land—but that would be in the edge of the grant. When you get out into the railroad grant, there is very little farm land. All the lands that are fit for agricultural or grazing were taken up or sold, or bought some time ago.

Q. Is it or not a matter of common knowledge, and haven't you observed it all through this grant where you have been, that the even sections where they have been homesteaded have cabins, that were log cabins or built of shakes, shingled with shakes or boarded up, that are in a state of decay, with practically no clearing, where there is no evidence of any human habitation ever having been there except that? Isn't that the history of the homestead entries in Western Oregon?

A. Yes, sir.

Q. Now, suppose that a man pretending to be an actual settler should buy some of these quarter sections at $2.50 an acre, and want to utilize it for grazing purposes, and was required to confine his stock to the 160 acres and to support his stock from that 160 acres, and then support himself and his family from that, what, in your judgment, would be his ability to do that?

A. He couldn't do it.

Q. Then when you speak of these lands as grazing, do you mean to be understood as saying that 160 acres would be sufficient grazing land to support a man and has family?

A. No."

Whereupon witness further testified, that he helped clear 160 acres within the city limits of Portland some time ago, in a tract known as the Vernon tract, about half a mile, a mile or so, from the Willamette River. He had a contract of clearing that of small brush and stumps. There were not very many stumps and no standing timber, just brush and some stumps and a few old logs. It was level land and was not of the class of this land in this grant. He has had no experience or knowledge of clearing timber lands, such as he cruised. He has seen clearings on the road leading up the Necanicum River from Seaside, about fifteen miles, a few clearings on either side of the road. He recalls that stumps are left about 15 or 20 feet high, which at the butt are two or three times the heighth of a man. The method used now in getting this down-timber into a pile to burn is donkey engines to get it together. The big stumps are blasted or burned out with powder, or split up and generally piled together with those donkey engines. Some of these stumps are quite close together, probably 8 or 10 feet apart sometimes, sometimes maybe 4 or 5 rods apart. There is a great deal of stuff in the ground that one cannot see on top. After you take the top of the timber off, there is quite a lot on the ground on those lands that he knows anything about.

These lands he has cruised compare favorably with those along the Necanicum. Some of the lands he cruised are not so heavily timbered. It would cost to get the stumps out, clear the land, and get those stumps off, as high as $200 or $300 an acre to make it fit for plowing.

"Q. Mr. Booth testified that the price would range all the way from $50 to $500 an acre. What is your judgment about that?

A. I should think that would be a pretty fair estimate."

Whereupon witness further testified, that these timber lands of the company that were unsold would be chiefly valuable for timber. The stumpage value of this timber on these lands runs from a dollar to a dollar and a half or two dollars, it depends on the location and the quality of the timber. Whereupon on cross-examination witness further testified, that before coming to Oregon he lived in Minnesota a good part of the time and was engaged in the timber business there, and has been engaged in that business since he was eighteen years old in one capacity or another most of the time, practically all his life. He first started to work for the Railroad Company in 1902, and worked he thinks about six months cruising timber. He then worked for the Southern Pacific Company as logging foreman for about six or eight months in 1906. He started to work the last time in 1909 and has worked for the company continuously since that time, and all this cruising mentioned in these reports here, was done since 1909. He worked for

the company under the directions of A. W. Rees. He sometimes cruised each day 160 acres and sometimes half a section. Some days less than 160 acres, cruising by 40 acre tracts. That is a fair average of cruising by the method used by him.

"Q. Now, Mr. McLennan, can you give me the names of any homesteaders that you know of that have merely settled on timber lands to obtain the title—or descriptions of the land?

A. Beg pardon?

Q. Can you give me the names of any homestead entrymen who have entered homesteads, built a shack, made a small clearing merely for the purpose of acquiring the title to the land in order to sell the timber on it, and not for the purpose of making a home out of it?

A. I don't think I made that statement; but I can show you lots of homesteads, just a small cabin, which has fallen into decay, and a small piece of clearing—some of them haven't got any clearing, and what little clearing there is is grown up to brush. I don't know the people that made the entries—I never looked into it. The people were not there, so I never went into that.

Q. You never examined into the history of the land?

A. They seemed to all have the same history, judging from—

Q. How did you know that that was a cabin that was placed there merely by some homesteader?

A. Because it is on Government land, and there would be no other object in building the cabin and making this small bit of clearing, and then letting it grow up.

Q. Don't you know, Mr. McLennan, as a matter of fact, that any number of cabins have been built in Oregon upon lands that were soon to be opened by survey, merely for the purpose of holding the land in order that scrip might be filed on it by big timber companies?

A. Well, in that case there is no homestead in those hills. They are all alike. I don't know what they have been taken up for, but I haven't seen any man living on a homestead in those mountains.

Q. You don't know what the cabins were built for? You merely have seen the cabins that have been abandoned?

A. Yes, sir.

Q. That is the only thing you base your testimony on?

A. I took it for granted that they were homesteads. In fact, I have been told that they were. But I didn't see the people—the people—were not living there."

Whereupon witness further testified that he never engaged in the examination of the lands for the company, other than this cruising about which he has testified. He has examined trespasses and such as that, in different localities out from Portland, wherever he ran

across a trespass, meaning where timber had been cut off the railroad lands. He has no reference to where someone squatted on the land, but refers to trespass by timber companies, or where farmers were cutting timber for their own use, or anybody for that matter. Whereupon on redirect examination witness further testified that he had a compassman with him when he was cruising these lands.

Whereupon ROY WOODS, called as a witness on behalf of defendants and being duly sworn testified that he is thirty-six years old, resides at Newburg, Oregon, and at the present time is in the fire patrol with the State. He had been a compassman at various times for the Oregon and California Railroad Company since 1902. He has been over the lands of the company as a compassman, some in Columbia, Josephine and Coos Counties, and very little in Douglas County. He was compassman for Charles Cavell and D. C. McLennan, who has just testified. He was not with him as compassman during the time he made all of his cruises but was compassman for McLennan in December 1909 up to March 1 1910. His first year out as compassman for Covell was in Josephine County, some in Douglas and Coos Counties but he is not certain as to Jackson County. He was with him as compassman something like probably about five months. He did not work with him in Multnomah, Washington, Linn, Lane or Clackamas Counties. He has had experience as a compassman with other cruisers for other people. He was out with the Moylans who were cruising he thinks for the

Booth-Kelly Lumber Company in January 1903. He has not worked for the Oregon and California Railroad Company since June, 1912. During the work that he did last for the company, he was looking over some of its lands and out with a photographer. He was looking out for people who had attempted to settle or locate on some of these lands to see the character of the lands where it was improved where it was inhabited and what was its general character. These lands were in Columbia and Washington Counties, some in Jackson and Josephine Counties. The lands he then examined, upon which parties had attempted to trespass or settle, were mostly timber lands. He was present and examined the timber lands in Columbia County where a lot of photographs were taken by Gifford and C. W. Kempton.

Whereupon referring to "Defendants' Exhibit 269" witness recognized photographs Nos. 2942 and 2943 and testified that he was present and saw these two photographs taken. Besides himself, Kempton was close at hand when they were taken and he thinks L. D. McLeod was on the ground at the time. He had occasion to run these lands out in 1910 when he was there and also had occasion to run these lands out this winter and is pretty well acquainted with that section, having been to most every corner in that township and that is the way he ascertained where the camera was placed. The top of the picture was taken from the place indicated in the blue print attached to the photograph. The three corners indicated are all perfect. The land in the prospect shown in the photograph is heavy timber

mostly and the land on the ridge is timber. In the immediate foreground of both of these photographs, the timber has been burned. Prior to that time it had been heavy timber. He would say that this land is on a straight line about 10 miles from the Columbia River and Houlton was the closest railroad station on the main line of the S. P. & S. Railroad Co. formerly the Northern Pacific. He was with Gifford at the time of taking another photograph, "Defendants' Exhibit 269." This photograph shows the character of the improvements made on these three quarters in section 8 same township. On one piece of land there had been a house at one time, but it had burned down. This land was, or had been government land at one time. These improvements were abandoned. They were all on even sections, at one time government land. From the lands he had covered and been over in person, the lands of the Oregon and California Railroad Company that he had visited, are a good deal more valuable for the timber than for anything else. He would think that the amount of timber on a forty necessary to make it of commercial value as timber land, would be a good deal owing to the character of the land, whether it is standing on end or could be cultivated after cleared. He does not know how much timber there would have to be on a forty to make it valuable to sell as timber land. He is not a timber man in that sense and does not know how much some of these forties run in board feet. He has had no experience in clearing this land. He has never taken a homestead himslf, and has no knowldge of abandoned homestead claims in timber

regions. On the even sections in this grant he has seen a good many of them that were apparently settled and abandoned. Some of these entrymen were living close to where their homesteads were, some of them he does not know where they are. In a great many cases titles to these lands have passed to timber corporations. In most cases where he was able to find the improvements there was a pile of rocks and a few scattering shacks all dilapidated. Some places there would be a board house probably with a little patch around it, a few berry vines or something where they had grown up all over the place, with windows and doors all out. There was no evidence of continuous settlement any more than just what is required to become in possession of the land. He has been in Columbia County and the homesteads on the ground that he went over were practically all abandoned, whereupon complainant objected to all the testimony of this witness relating to the character of the land within the limits of these grants, settlements thereon and public ruling thereon as incompetent, irrelevant and immaterial and it was agreed that the same objection should be considered as taken to all the testimony of the witness upon these subjects.

Whereupon witness further testified as follows:

Q. Well, now, what would you say as to the ability of a man to go onto one of these 160-acre timber quarters as an actual settler, to make a living for himself and family on the land?

A. It would be impossible.

Q. Why?

A. Well, there is nothing there to make a living from. There is no ground that you could derive anything from whatever.

Q. Couldn't he get out there and grub these big trees up, and cut the timber down, and sell it for cordwood, and sell it to these timber people, and in that way make a home for himself and his family?

A. Well, he might if he lived to be a thousand years old—he might get a patch big enough to support himself and family.

Q. Then, if I understand you, you would regard it as practically impossible for a man to go on these premises as a settler?

A. I do.

Q. And make a living for himself and family?

A. I do.

Q. Well, what is the fact as to whether he could not buy this land from the company, supposing the company was willing to sell it, at $2.50 an acre, and go out there and fence it, and make a living off it by raising cattle and pasturing it, or raising stock of some kind, using it as grazing land?

A. What do you mean—on this 160 acres?

Q. Yes, just 160 acres. What is your answer to that?

A. No, I don't think he could, no, sir.

Q. Well, now, suppose the company had sold all of these timber-lands to these so-called actual settlers, of which there are some several thousand actual or potential settlers shown in this record, at $2.50 an acre, in quantities not exceeding 160 acres, and had given the so-called actual settlers a good title, what would have become of these lands?

A. Well, practically in about the same condition they are today. What was handy to a mill would be logged off, and the balance would be in the hands of some timber corporation, standing just as it was.

Q. Then these so-called settlers would have to sell them, or would sell them?

A. Yes.

Q. Is that right?

A. Why, that would be the only thing they could do. That would be the main object in taking them, I should imagine.

Q. Would they be able to sell them at an advance of $2.50 an acre under the present market conditions?

A. They certainly would.

Q. Some of these timber-lands in Columbia County that you saw there, what would they be worth for 160 acres at the present market conditions?

A. Present market value?

Q. Yes.

Mr. Rabb: Objected to on the ground that the

witness has not shown himself competent to express an opinion relative to the market value of timber-land, as he is shown only to have been a compassman.

Q. You may answer.

A. Those claims in there went from twelve to fourteen—there is one young man, I think, in there has a claim in section 22, the northeast quarter of 22, if I remember the description right, has a standing offer of sixteen thousand or eighten thousand—I forget now which it was, with a lumber company there, I was informed.

Q. Sixteen or eighteen thousand dollars?

A. I wouldn't say for certain which it was at that time, but I was informed.

Q. Is that the fair market value of these lands?

Mr. Rabb: I move to strike the answer of the witness from the record as hearsay.

Q. Is that the fair market value of these quarter sections?

A. That is what they were sold for, I understood him.

Whereupon witness testified that he is not in the employ of the Company; that he discontinued his employment June 5, 1912, and is now in the employ of F. A. Elliott, State Forester, as supervising fire warden for Multnomah County. He has knowledge of what little timber lands there are in Multnomah County, but does not know where the unsold lands of the Company are

situated. There is a small strip of timber lands in Multnomah County situated on the extreme west line of the northwest corner and the extreme northeast; that is up the Columbia River from Eagle Creek south. There is no timber above Eagle Creek; there is also timber east of Latourell or Bridal Veil country. The timber in that section is fir and larch and is of average quality. It is merchantable timber.

Whereupon upon cross examination witness testified that he now resides at Newberg, Yamhill County. He is under F. A. Elliott, who is State Forester, formerly an employe of the Oregon and California Railroad Company. Since he was twenty-one years of age he has followed stationary engineering for saw mills, flour mills, brick yards, ice plants and worked at various times since 1902 for the Oregon and California Railroad Company, and his acquaintance with these lands is such as he gained while in its employ. He had the names of parties that had taken these homesteads that he mentioned as abandoned but can only recall one or two. One was Julius Floeter, who was in the southwest quarter of section 4 North 3 West, and a man by the name of Anderson on the northeast quarter of section 8, same township, and a man by the name of Wilson on the southeast quarter same township and section. These cabins were all near the section lines between the even and odd sections, within the limits of the grant, but he does not know whether these cabins were intended to be placed on the railroad lands. The entry calls for the ground the cabins are situated on. The names and descriptions

of the land were taken off the government records. He supposes they were handed to him by someone in the office of the Railroad Company at the time he went out to make the examination of these lands from January up to June 1, 1912.

Whereupon C. M. STITES, called as a witness on behalf of defendants and being duly sworn, testified that he is fifty-four years old and lives in Washington County, Oregon, and is a farmer. He has lived in Oregon since 1882, moving to Williams Creek, Josephine County, in 1883. He lived on a farm there until 1886 or 1887. He was assessor for Josephine County in the years 1895 and 1896 and always made his home called Williams Creek until 1907, when he moved to Washington County, where he is now living. His first experience in the sawmill business was in California. He worked there the season of 1897 and next at Merlin in 1898 for the Sugar Pine Door & Lumber Company and worked for that company every season except 1895 and 1896. He thinks he quit that Company in 1900 and in 1901 worked awhile for the Booth-Kelly Lumber Company at Coburg, starting in as a common laborer and finishing as foreman of the mill at Coburg, which mill had a capacity at that time of about 70,000 feet for 10 hours. His first experience in cruising timber lands in Oregon was when he commenced in 1897 when employed by the Sugar Pine Door and Lumber Company. He was superintendent of their mill or mills and cruised and then sawed out. In 1904 he began cruising for any person who wanted the work done and had worked for

a great many different people. This cruising for the Sugar Pine Door and Lumber Company done by him was in the vicinity of Merlin and Wolf Creek in Josephine County. He never cruised any for the Oregon and California Railroad Company but cruised Josephine County for the County of Josephine and made two trips as a cruiser to Eastern Oregon for the California & Oregon Land & Live Stock Company. He is familiar with the lands of the Oregon and California Railroad Company in townships 32 to 41 south inclusive, ranges 5, 6, 7, 8 and 9 west. Commencing with 32, which is in Douglas County, Oregon, and along in the northern boundary of 33 south, which is the boundary line between Josephine and Douglas, the water-shed is the boundary line between these two counties. Township 41 south is bordering the State line between Oregon and California. The actual cruising was done on surveyed land. He did not cruise any unsurveyed lands which would be in the north part of the county, Range 7 and 8 west is the boundary of the surveyed lands, and in the southern part of Josephine County there are some surveyed lands as far west as range 9. He has been in 39 and 40 south, ranges 2, 3 and 4 in Jackson County, on the head waters of the Little Applegate and partly on the head waters of the main Applegate, southwest of Jacksonville. He was never in the Jenny Creek country in the eastern part of Jackson county, but has been across the mountains and in Klamath Falls and through that country, but did no cruising in that part. He has also been on a trip of reconnaissance to Fort Klamath and north of

Fort Klamath, but did no cruising in that part of the country. He cruised all of the surveyed land of Josephine County for the County while he was assessor, but cruised no unsurveyed lands. His cruise included the unsold lands of the Oregon and California Railroad Company. He has cruised in 32-7 and 32-8 in Douglas County for himself and individuals. That would be in the south boundary of the county and in the country drained by the west and middle forks of Cow Creek. He has not done any cruising in the western part of Douglas County. He made a trip to Coquille and down through that country, cruised some in there, probably a section or something of that kind. As far as he saw, he became familiar with the general character of the timber in the western part of Douglas County but of course was not noticing that particularly. He has been in a part of what he supposes is Coos County, but does not know,—in the Coast Mountains within the 30 mile limits of this grant. He has been in Lane County. He made a trip up the middle fork of the Willamette River and across the range. He has made that trip some three or four times, first in 1893 on a pleasure trip. Then in going to Eastern Oregon he made two trips across there and immediately after he had been over the mountains he began cruising but did no cruising west of the summit of the Cascade Mountains. He saw all the timber that was in sight of the road, that is all, and the general character of the country of course. He has not been in the western part of Lane County and had no opportunity to see the timber lands of the Company and

others in Linn, Marion or Clackamas Counties, although he had been through Clackamas some but paid no attention to the timber. He has not been in Benton, Linn, Yamhill, Washington, Columbia or Tillamook or through the timber lands of Tillamook County. He is more especially familiar and has directly cruised all of the lands in Josephine County and does not think there is more than 1½ or 2 per cent of these unsold lands of the Oregon and California Railroad Company, with which he is familiar, that are suitable for settlement or agricultural or horticultural or other such purposes. His judgment is based on his farming experience and the observation of the experiments that have been tried by others on these lands and from farming operations and fruit raising operations that he conducted himself and saw others conduct there and is also based upon his actual knowledge in going over these timber lands that he has cruised. He was acting for Josephine County when he cruised these lands and has never been employed by the Oregon and California Railroad Company, to do any cruising of any of its lands. Of the lands that he cruised in Douglas County there is none that are suitable for agricultural purposes. The chief value of these unsold lands of the Company in Josephine and Douglas Counties and other sections with which he is familiar is the timber. In Josephine County the lands are very mountainous and what is really unsold contains very little pasturage, or would contain very little under any conditions. The pasturage in the higher mountains would amount to considerable, and

does under natural conditions, from about the first of June until November first. To give a good idea of how much pasturage is furnished, he would say that township 39 south, ranges 5 and 6 west, and township 40 south, 5 and 6 west, furnish pasture in the summer, and the maximum pasture has been furnished there for 1,000 to 1,100 head of stock which have absolutely eaten all the pasture in these four townships in that time, besides this stock was pastured outside of this area to some extent, referring by stock, to cattle mostly. That area would be something over 80,000 acres necessary to feed 1,000 to 1,100 head of cattle during that period. The foothills around the valley, in his judgment would raise good grapes, that is quite a per cent of it, probably 50 per cent of the percent he has named. Possibly once in awhile a place would raise peaches or pears and it is his judgment that is the extent of what the land would do. There has not been enough of these lands utilized to amount to a percent. There is one demonstration that proves that grapes can be grown commercially on such lands. He does not remember what section but it must be in township 37 south range 5 west, probably a mile from the Applegate River on a farm owned by H. Carson, who has he thinks 60 acres in grapes now. It is hill land. The expense of clearing this land and putting it to any such use as that would vary with the conditions and would run from $30 to $40 an acre up to $100 or $150 per acre, something like that. There is a limited area of that character of land in Josephine County. Land that is covered with saw or commercial timber would cost to

clear it and make it available for plowing, if there was soil, from $50 to $200 an acre, some places as high as $300 per acre. The soil of these lands in most of the eastern part of Josephine County is granite soil, decomposed granite. In township 35, 6 and 7; 36, 5 and 6, there is quite a lot of flat and small hill lands of decomposed granite mostly underlaid with beds of gravel, especially in 36—6. There never has been any profitable farming done on any of that land. Granite is a stone and this is just simply decomposed by the action of the weather. This township 36—6 he speaks of, the flat land is to the southwest from Grants Pass and is underlaid with a deep bed of gravel, he does not think any one knows how deep it is. It is gravel the size of a fist and down, so that the water leaches right through the ground and takes all the substance out of it. If it were irrigated it would possibly be suitable for cultivation, but it does not hold the fertilizer or moisture. It would not be at all practicable to irrigate these hill lands—it would be out of the question to do that. The supply of irrigating water from the gravity system is all taken and taken again. Probably streams that have one thousand inches have claims for three or four thousand inches. The talk of irrigating these lands is idle because there is not the water. He does not think there is any possibility of the lands which he cruised in Douglas County being utilized for any agricultural or horticultural purposes.

Whereupon witness further testified as follows:

Q. Now, suppose, Mr. Stites, that an actual settler, so-called, should apply to the company to purchase 160

acres of these lands that you speak of, at $2.50 an acre, and should be expected to go out there and settle on these lands, enclose his quarter section, and make his living for himself and his family on this quarter section, and confining his stock range to that quarter section, or his agricultural or horticultural productions to that quarter section, what, in your judgment, would be his ability to succeed or to utilize that quarter section for settlement purposes?

A. Well, the unsold lands are none of them that I would consider a man would be justified in undertaking such a thing.

Q. Suppose a man went out on a quarter section that had commercial timber on it, ranging in value according to the stumpage from $5,000 to $10,000 per quarter section, and the company, under pretense of his being an actual settler and applicant under this act of April 10, 1869, should sell him this quarter section, and he should go out there with his family, or alone, build him a shack for a home, undertake to live there, make a home out of it, and to make a living, what use would he put that land to, do you know?

A. That would depend in a great measure on how far he was from transportation where his land was located, and all those kind of things.

Q. Well, what would be the best use that he could put that land to, if it was heavily timbered?

A. The best thing he could do with it would be to sell the timber off the land, in my opinion.

Q. Suppose these timber lands of the company were all sold to so-called actual settlers, a good title given them, in quantities not exceeding 160 acres, at a price not exceeding $2.50 an acre, and they got a good title, were not required under the Act to live there any length of time, but just to settle, how long would it be, in your judgment, and from your knowledge of the way these timber lands have been taken and disposed of, until these actual settlers had disposed of all these timber lands for their market value?

A. Well, I would suppose that they would sell at the first opportunity.

Q. What is your knowledge, if you have any, as to what has become of the lands in the even sections, title to which has been taken from the United States, where they are covered with timber?

A. I am not informed as to what has become of the homestead entries. A great many of the timber claims have been sold—practically the majority of them.

Q. To whom have they been sold?

A. I don't know. Well, I believe that one group on the head of Williams Creek was sold to a man by the name of Olsen.

Q. What class of investors have secured the title to these lands, if you know?

A. I did not understand.

Q. What class of investors have purchased these lands?

A. Well, there has been some bought by mill owners, but mostly by timber speculators, I suppose. I am not very well informed on who has acquired the title.

Q. In your travels through these lands in Josephine County and in Douglas County, did you notice anything in the way of settlement on these even sections? What evidence of homestead settlements, if any, did you notice, and what has become of the improvements?

Mr. Rabb: Objected to as incompetent, irrelevant and immaterial.

A. The homestead improvements that I recall are mostly in 39—6. There were six homesteads there, which ground, I think I cruised in 1906. At that time the cabins were new, practically new. I seen no one at any of the cabins, but in most instances there was a little piece of ground spaded up, and some garden planted.

Q. What kind of cabins were they as to material?

A. They were built of split cedar.

Q. How large?

A. Oh, I should say 14 or 16 feet square.

Q. One or two stories?

A. One story high.

Q. Any fences?

A. I do not recall any fences.

Q. Any stock?

A. No stock.

Q. Any human beings?

A. No, sir.

Q. Any evidence of anybody living there?

A. None at all. Any more than this, there were outfits for camping and cooking in most of the cabins.

Q. What kind of timber was it where these settlements were?

A. These cabins mostly were built right along the flat of the stream, and the timber right in the bed of the stream was Port Orford cedar mostly. The hillsides were very steep, probably an angle of forty-five degrees, something like that, covered with fir timber, most of it.

Q. Good fir timber?

A. Not very, no.

Q. What was the chief value of these claims that you saw, these homesteads?

A. If they had any value, it was for timber.

Whereupon on cross examination witness further testified that he has been largely engaged in sawmilling since coming to Oregon. He has farmed on Williams Creek in Josephine County, where he owned 100 acres of land and his father owned 180 acres and they farmed together when he farmed. After he went to work for wages his father and the family lived on the farm. His farm is in section 34, township 38 south, range 5 west of Willamette Meridian. He has never filed on a home-

stead. He cruised all of the lands in Josephine County that he thought was worth cruising. This cruising was not done while he was assessor of Josephine County, but was done in 1905 and 1906 and part of 1907 after he had been assessor in 1895 and 1896. He did not cruise any solid townships in Dougslas County, but cruised around in two or three townships, 32-7, 32-8 and reconnoitered west of there but did not do any cruising. His only knowledge relating to the lands in Lane County is practically confined to a trip taken along the public highway concerning which he has testified. He has cruised a little land on the McKenzie, probably ten or twelve forties, something like that but does not claim any particular knowledge only as to the general lay of the country. He got his information about the homestead improvements in 39-16 from blue prints of the government plats which he always carried with him when he went to cruise the land. He does not know whether these entries have been abandoned or not. He knows that the alleged homestead settler hired these cabins built and he talked with the man that built the cabins. There were a number of them built by the same party, but he does not remember the man's name—the man he met while he was cruising below there. Individual locators or entrymen hired this man to build their homes; that is one man built them all, but the individual man hired this man as he understood it. He does not know whether this same man got the homesteads after the deal was perfected, but he does not imagine that he did, because he did not seem to him to have enough money to buy

anything—he did not buy them. This man was working for himself and lived there close to the claims, down the hill from them, and it would be naturally easier for him to build these cabins than anybody in the country. There were no people living in that township, only one man. The other man lived below in the next township. He thinks there was one man but he does not remember his name. Possibly his name is Barnett, he thinks it was, who lives in section 31 of that township. If he remembers rightly Barnett contested with the Railroad Company for title to his land and he was living on railroad land. If a man lives in a cabin he is supposed to have a bed and some furniture. In these cabins there was simply a frying pan or two and a place to lay down some blankets, something of that kind. There was no furniture of any kind. Possibly a block of wood set on end. This was in 1906. He does not remember or recall the names of any of these homesteaders.

Whereupon on redirect examination witness further testified that he had never been in the employ of the Oregon and California Railroad Company or the Southern Pacific Company.

Whereupon C. W. KEMPTON called as a witness on behalf of defendants and being duly sworn testified that he is thirty-six years old and is at present employed as inspector of sewers in the City Engineers' office, of Portland Oregon and has been in Oregon a little over two years and was employed as land examiner and taking pictures of lands by the Oregon and Cali-

fornia Railroad Company from January 1, 1911, until along in July 1912. He went out on some lands and took pictures on the Santiam River. He was through Polk and Lane Counties. A portion of the time he was by himself, but a majority of the time, Roy Woods, Kinser and Elliott, the State Fire Warden's son were with him. Witness took the photographs "Defendants' Exhibit 273" and made notes on the back of them, not being absolutely familiar with the different sections of the country he was in, knowing only just simply from examination and finding the quarter corners and by direction of streams that flow in regard to the maps that he carried to show his location. He made the notes on the back of the photographs after they were taken; that is, he would make notes at the time on each film, when he was taking all these, and afterwards would transfer them from that notation to the photograph. These notes accurately record what he noted at the time he was on the ground and they are correct. There is a photograph here showing the south half of the southeast quarter, and the south half of the southwest quarter, section 18, township 7 south, range 6 west, and the photograph was taken showing the improvements on the place April 2, 1912. The claim was a homestead of Alfred Haldeman. All that he has taken were homestead claims. The improvements were badly decayed; the buildings were put up out of shakes. The memorandum shows the size of the buildings that were on the land, the measurements show the size of the house that was built. The house was 12x12 and the barn 12x14

and were not occupied. There was no sign of occupation around them. To all of which testimony of this witness complainant objected as incompetent, irrelevant and immaterial and it was urged that this objection should be considered as taken to all the testimony of this witness as to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof.

Whereupon witness further testified that the cabin shown in the photograph taken at this time was built on the bank of the creek and is in a canyon on the bank of a small creek. The timber on the claim was good fir timber and the land was chiefly valuable for timber; it was very rough. The next photograph shown him was taken on the head of what is known as the Rickreall River in Polk County and he knows that very well. The memorandum was a report that this was the homestead of John F. Johnson on the south half of the northeast quarter and the north half of the southeast quarter of section 2, township 8 south, range 8 west, and he got a portion of this data on the memorandum as to when the filing was made and patent issued from the Oregon and California Railroad Company at the time he went out to work and he got the date of the transfer of the title from the records in the Recorder's Office at Dallas. This notation shows the present owner; that is who owned the property at the time, and is what he secured in the office. The improvements on this land were badly in decay, broken down by a tree falling across the corner of the house, not occupied, and no farther improve-

ments on the land or ground at this place.

Whereupon it was agreed that this witness would testify that the memorandum on each of these photographs is a correct statement of what his testimony would be and the same was received as his testimony, subject to the objection made. It was further agreed that the witness would testify that he obtained the information as to when the land was filed on, when patented, from the land office of the company when he started out and obtained the date when sold and the consideration for such sale from the records of the Recorder's office in the various counties in which the lands were situated.

Whereupon witness further testified that he did not examine the County records as to all of these photographs. Those that are in Polk County where they are shown on the back, he has examined them. There may be other notations on some of those others where he did not go to the records in the county. Polk County he went there himself. He went through this county by himself and secured this data and made all the notations or memoranda that were made by him under the circumstances as he has stated he believes. He can tell by looking at the back of them whether or not he did so. He took these photographs according to the dates as placed in the memorandum on the back of the picture. Some few of these photographs are not homesteads. He was engaged in taking these photographs "Defendants' Exhibit 273" from about the 20th of Jan-

uary up to July, 1912, but was not out continuously. The lands shown in these photographs are situated in Polk, Lane, Clackamas and he believes there are one or two in Marion County. These reports or memoranda made on the back of these photographs show the descriptions and the memoranda as to conditions of improvements and occupation and so on are according to the facts as he found them on the ground. These lands shown in these photographs are chiefly valuable for the timber. He found very few of these improvements occupied, he thinks there is but one picture where there was any one occupying the improvements. These improvements were badly in decay and broken down. Occasionally there was an old wagon road going by these improvements, but mostly trails. There was no evidence of recent occupation on these lands, with the exception of one where there was an occupant. One place was occupied, they had been in there about two years and they had not at that time received their patent. The man was a homesteader and had a wife and children with him. The nearest town to which this was would be Mahama on the Santiam River in Marion County, about 12 miles away. He had a cabin and he saw him there in May, and all he knows as to whether he and his family had lived there continuously was the statement of the man that he had been there that time, and that he had been there since he built his cabin. He had about a quarter of an acre cleared. It was too early in the season for him to start the crops, excepting a small garden which they had started and making his

clearing there. His cabin had two rooms and with that exception he found no settlements or occupants on any of these claims.

Whereupon defendants reoffered each and all of these photographs marked "Defendants' Exhibit 273" being about 80 photographs in all and all of which are enclosed in an envelope marked on the outside "Defendants' Exhibit 273," which were received in evidence and are hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Whereupon witness recognized "Defendants' Exhibit 273-a" as that showing the improvements on south half of northeast quarter, west half of southeast quarter of section 24, township 10 south, range 2 east, where he found this man and his family who had been there for some time as the man said. With that exception he found no evidence of occupation, no persons living on these premises shown in these photographs.

Whereupon said photograph so recognized was marked "Defendants' Exhibit 273-a."

Whereupon on cross examination witness testified that these notations on the back of these photographs were made in his presence, he dictated the memoranda from the notes that he made at the time he was on the ground on the films; he had a note book that he kept notes in and he used an Alvesta panoramic camera and these pictures were all taken while he was in the employ of the Company. He was employed by the railroad com-

pany from January until July, 1912.

Whereupon on redirect examination witness further testified that these memoranda on the back of these photographs are accurate from the memoranda made in his book at the time each day. He dictated these at the time they were copied on the photographs taken from his memoranda. The Oregon and California Railroad Company's land office furnished him the data of when these homesteads were entered and patented. It was the Portland office in charge of A. W. Rees that furnished this information. Some of these photographs had been enlarged, but were all taken with the same camera. The data as to when sold and the consideration, for what sold, where it appears on the back of these photographs was obtained by him in person from the Recorder's Office at Dallas. He would go to the volume that contained the record of the deed and take the date of deed and the consideration stated and verify the description of the land to see that it was the same land that was given as a homestead. He ran it down from the legal descriptions.

Whereupon witness testified as follows:

"Q. Did you pay any attention to see to whom these lands were conveyed, and what class of people were buying them? Whether they were timber companies or what?

A. Gone into the hands of timber companies."

Whereupon upon re-cross examination witness testified that he had charge of the party with whom he was,

when these pictures were taken. His instructions were, to go through and examine these lands and photograph whatever he found, they giving him the homestead locations and the descriptions of the homesteads. In taking photographs it is necessary to have weather conditions suitable for that purpose. These photographs are all of lands in range 5, 6 and 7 west and without referring to his notes he could not just recall what townships they were in but the lands were scattered over the strip and in ranges 5, 6 and 7 west but he could not recall without referring to his notes. He did not take a photograph of all the lands that had been entered from the government by homestead entries in these townships, weather conditions did not always permit and they did not return for that purpose. There were a few people living in these townships who had patented homesteads from the government other than he had shown. His only knowledge of these lands was such as he obtained on this trip. He was in Polk County something like three months.

Whereupon on re-direct examination witness further testified that very few of these homestead claims that he did not photograph were occupied. There was very little occupation. The condtiion of these that were not occupied, as to improvements where he did not take the photographs, was about the same as the photographs displayed. He was engaged in this business from January until July, something like six months, but not continuously, as weather conditions were such that at times it was not justifiable to put out any films. He would

say there would not be two per cent of the homesteads that he saw in all that time in all that country that had any settler actually living on them. The even sections were all taken with the exception of about, if he remembers correctly something like 840 acres in Polk County that was not taken of government lands. These lands that were homesteaded were very rough and rocky and they were chiefly valuable for timber, if they had any value. All of these photographs taken showed lands within the limits of the grant. A couple of these photographs were taken on an odd section but this is shown on the back of the photograph, with that exception they were all taken on the even sections, within the limits of the grant.

Whereupon ALICK WILKINSON called as a witness on behalf of defendants and being duly sworn testified that he is forty-two years old and resides at Gresham, Oregon, and has lived in Oregon over 8 years and has been in the business of lumbering or acted as compassman with cruiser McLennan. McLennan cruised in township 3 north, range 3 west and the southern part of 4 north range 3 west; township 19 south, range 4 west and part of township 3, range 5 west; township 21 south ranges 7 and 8 west; township 22 south, ranges 4, 5, 6, 7 and 8 west and he was with him during the time he cruised these lands as compassman. All of these townships are rough. To which complainant objected as incompetent, immaterial and irrelevant and it was agreed between the parties that this same objection should be considered as made to all the testimony of

this witness regarding the character of the lands within the limits of these grants and settlements thereon and public entries thereof.

Whereupon witness further testified that to the best of his judgment about five per cent of these lands would be suitable for agricultural, horticultural or some settlement purposes. These lands are chiefly valuable for timber. He has had no experience in cruising lands other than as a compassman for a cruising party. He has worked in the timber business ever since he was fifteen years old and has been doing everything—foreman in logging camps, all kinds of work, everything in logging camps and did work in a sawmill a little. He is not familiar with the character of these lands outside of the particular lands that he was over with McLennan, which had on them fir, cedar and hemlock, which were in Douglas and Lane Counties. He was also with McLennan when he cruised the 840 acres in one body in Washington County and 1340 acres in another body, part of it in that county, but could not say how many acres in that county. He served with him as compassman while McLennan was cruising them. He was with McLennan when he was cruising in Lane County in three townships. He was with McLennan in Douglas County from about the 4th or 5th of March up to the date he testified in October, 1912. The work that he did with McLennan was in Lane, Douglas and Washington Counties. He is still in the employ of the Oregon and California Railroad Company as compassman and commenced work this time for that company February 1,

1912. In the spring of 1910, he was out with them 27 days in Washington County. To make a quarter section of timber land commercial would depend upon where it is located and how close it is to transportation. Some would be worth more than others. Some that is way back is not worth so much, others close in are worth quite a little. A 40 that is only a million feet board measure is marketable, it all depends upon the quality and location and accessibility and distance from transportation.

Whereupon upon cross examination witness testified that he had been working in the timber as his occupation all of his life since he was fifteen years old, worked in Northern Wisconsin; came to Oregon in the spring of 1894 and did everything in logging camps; has been sawing in this country. Northern Wisconsin was a timber country.

Whereupon BEN IRWIN, called as a witness on behalf of defendants and being duly sworn, testified that he is an abstracter, residing at Portland, Oregon, and was employed by the Oregon and California Railroad Company from 1905 to 1910, chiefly abstracting and in some cases making examinations of land. He has been in portions of the grant in nearly all of its extent, making examinations. In Columbia County he has examined pretty closely. He has made examinations in Multnomah, Clackamas, Linn, Lane, Douglas, Josephine and Jackson. The most careful examinations were in connection with getting information relative to settlers or

trespassers on the company's lands in Columbia and Multnomah Counties. He searched for the location of certain lands claimed to have been settled upon by certain applicants for the purchase of these lands under the $2.50 per acre clause, and particularly lands thus applied for by persons represented by A. W. Lafferty in this litigation referred to in this record. He was on the work of finding their depredations and operations on the company's lands. These photographs, Defendants' Exhibit 270, containing a typewritten memorandum pinned to each thereof, signed "Ben Irwin," which memoranda thus signed are numbered 1, 3, 2, 16, N, 23, 24, 20, 19, 5 and 8, and unsigned numbers 26, 29, 27, 31, 30, 34 and 33, being in all eighteen photographs, were made under his direction in the field, in connection with A. W. Rees. He and Rees located all of these photographs—all of these cabins and views.

Whereupon defendants offered in evidence said Defendants' Exhibit 270 with the memoranda attached, to which complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that the same objection should be considered as taken to all evidence of the witness relating to the character of the lands within the limits of the grants involved in this suit, settlement thereon and public land entries thereof.

Whereupon said Defendants' Exhibit 270 with said memoranda having been heretofore offered and received in evidence, are here reoffered and herein made a part of this Statement of the Evidence, identified as such.

Whereupon witness testified that he ascertained the descriptions and location of these lands upon which these cabins shown in the pictures, are located, by finding the section corners or quarter section corners, and pacing the lands in connection with his work as compassman for Rees, the cruiser and field agent of the company. These memoranda attached to each photograph were prepared by witness, in his report furnished to the company shortly after the examinations were made, and correctly represent the descriptions and dates, both signed and unsigned, as they were found by him at the time in the field. These photographs are of cabins and depredations upon land on the summit of the mountains between the Columbia and Nehalem Rivers, in Columbia County. The lands were very rough as a general thing, and steep, and the altitude was high. There was very heavy timber on nearly all of these lands. Fir was the predominating tree. He went into these cabins and in most instances there were a few dishes and frying pans, bedding, and in a few instances the parties or persons were near there trespassing upon the premises. In most cases there was no one present. In most instances the cabins were not occupied, but in a few instances they were occupied.

Whereupon complainant objected to said last mentioned testimony as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be considered as made to all other testimony of this witness relating to the settlements, conditions and improvements made by set-

tlers on the lands within the limits of these grants.

Whereupon witness testified that these photographs were taken about the date stated in the memoranda by Fred H. McClure, mostly in the presence of witness. Some of these cabins were constructed of logs, and some logs and shakes. The shakes were split pieces of cedar. The cabins were roofed over with shakes. This material for these cabins apparently was obtained in all cases from the lands contiguous thereto. These lands upon which these improvements or cabins are located, as shown in these photographs, were chiefly valuable for their timber. In going to these cabins they traveled from Houlton to a point in the vicinity of the lands and occupied unused houses in section 8, township 4 north, range 3 west. There were many unused and abandoned houses, but they stayed at a house which had been used at intervals by the owner.

Q. Well, were those cabins of the same general character as these shown in the photographs, where you say they were abandoned?

A. There are not many cabins in there. They are about of that character.

Q. Well, were those on the even sections?

A. They were, yes, sir.

Whereupon witness testified that in township 4 north, range 3 west, from the best information he was able to gather, and he endeavored to find it, there was not a single permanent resident at that time. They

had abandoned their places, such as they were, and removed. He was present when other photographs were taken that have been introduced in evidence, and participated in taking the remainder of the photographs in Defendants' Exhibit 270 to the extent of locating them and directing the photographer, as described in the memoranda attached to the photographs. Photographs Nos. 96 and 88, looking northwest, are upon lands that did not belong to the company. They were in Columbia County, about three miles south of the lands upon which the trespassers were found, and represent abandoned cabins of former residents.

Q. Do you know whether these were homestead claimants or not, as shown in 96 or 88?

A. I do not know whether they were homestead claimants or not. My information in the locality was that they had formerly lived there.

Q. How long did it appear that those cabins had been abandoned?

A. About four or five years.

Whereupon witness testified that it is his recollection that they made several trips, and that the dates shown on the memoranda and photographs are very nearly correct, except that the 1907 dates are undoubtedly erroneous, that is, May and February, 1907, should be 1908. The first trip that he made was in December 1907. These photographs which he has identified were taken by Fred H. McClure, called as a witness in this

case. Witness and Rees found the corners and paced out the distance and located the exact points where the cabins were found. He has had some experience in ascertaining corners and lines of lands in this country. For four years he located lands at intervals, and the work required him to find the corners. These descriptions on these various photographs are all correct, excepting in a few instances the trespassers had erroneously placed their cabins upon lands other than they had intended, that is, some of the cabins were located off of the line of the lands applied for. He found a great many notices of these so-called applicants, or so-called settlers, in nearly all cases, he believes, usually posted on the cabin or on trees near by. The notice belonging to No. 45, appears to the left of the door, about three feet from the bottom, and was nailed to a log. The notice for No. 41 appears in the photograph nailed upon the door. In all cases these notices had some name signed thereto. These cabins appear to have been constructed within a few months or less time, with reference to the time these photographs were taken, and were constructed from timber cut and trees destroyed upon the land, and were built of logs and shakes. A shake is a split piece of cedar. The predominating and controling tree of these forests shown in the photographs is Douglas fir. Nearly all of these lands upon which these cabins are located, and in all the contiguous territory around the same, were very rough, and all were chiefly valuable for timber, and nearly all of these claims were heavily timbered, and would run, as esti-

mated or measured by a cruiser, from five million to fifteen million feet per quarter section. It was the best timber to be found. There were some roads to go to these cabins, but the great majority of them were at some distance from roads. He was required to travel either over very poor trails or through the untrodden forest. A wagon could not be gotten to more than one cabin in five. There were no school houses or churches near these lands. He was present at the time other photographs were taken of the grant lands. He took a few photographs in Douglas County, west of Drain. These taken by him were taken after all of the other photographs shown in Defendants' Exhibits 273, 267, 268 and 269 taken by other persons. He has taken views of other parts of the grant, but not for this purpose. These photographs taken by him near Drain were taken for the company, and showed the character of the lands to be very rough. He had to do with taking some photographs in the vicinity of Larch Mountain, east of Portland, near Bridal Veil and Bull Run and that section, but was not present with Homer D. Angell when the photographs containing his signature to the memoranda were taken. Larch Mountain country is in Multnomah County. The character of the lands up there where these photographs were taken is very rough and rugged and heavily timbered. The land is chiefly valuable for timber. He has only been a compassman in other parts of the grant for Rees. When Rees was cruising he was with him every moment. He was cruising or looking at the character of the lands

on only isolated portions of the lands when he was acting as compassman, except in Lane County, which includes a number of the parcels shown in these photographs. The lands shown in 20 south 1 west are in Lane County. These lands described on the bottom of these photographs are situated in Lane County, on a tributary of the middle fork of the Willamette River, southeast of Eugene. These lands are very rough, mountainous and timbered. Measured by what he has observed while he was carrying and compassing for the cruiser, and while he was going through other portions of the grant, he would say that very little of that land could be cultivated without clearing at an expense greater than the land would be worth after being cleared. He has knowledge from investigation or personal experience as to the probable cost of clearing these timbered lands, where there was any soil that could be utilized after it was cleared. He has cleared a few acres himself and under his direction, and his information is that it would cost from $100 to $200 an acre to clear heavily timbered, or even lightly timbered land, and that cost would depend upon the extent, number and size of the stumps. There is a large amount of land in the southern part of the grant which is useless for any purpose except raising timber, on account largely of the climate, and the great majority of the land in the grant is not suitable for anything except timber. The soil of the land in the southern part of the grant is rocky, the land mountainous, and climate requires irrigation. The soil is not fit for anything—rocky soil that will not

grow anything. He has been over the lands of the company in Jackson and Josephine Counties to a considerable extent, and has been practically in all parts of the grant except Benton, Washington, Tillamook and Lincoln counties. He uses his independent judgment with reference to the character of these lands. He is not now in the employ of the company.

Whereupon witness produced certain photographs, which he says he took in other portions of the grant than those indicated. Whereupon the same were marked Defendants' Exhibit 313, and the witness testified that these photographs were taken in Douglas County and purport to show locations within the limits of the unsold lands of the company involved in this suit, and these lands are in section 27, township 22 south, range 6 west, and the photographs were taken March 9th or 10th, 1909, by him, and correctly represent what they purport to show.

Whereupon defendants offered these photographs, so marked, in evidence, and the said Defendants' Exhibit 313 was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified as such.

Whereupon witness testified that the lands where these photographs were taken, were heavily timbered and chiefly valuable for timber. The lands were very rough in most instances. The cabins were not occupied. They appeared to have been abandoned a few months. The cabins were constructed from material

made from trees cut upon the land, and were built from shakes and logs, and had been built within a few months. From his experience and observation, the stand of timber per quarter section, would be about six million feet, and that would be, relatively speaking, medium heavy. Douglas fir was the predominating tree. He knows how to measure or estimate the number of board feet and has done some of it.

Whereupon witness, upon cross examination, testified that prior to his employment by the company, his occupation was that of a stenographer principally. He has worked at other occupations, clerking in stores, farming, etc., farmed in northern Nebraska, a prairie, open country, left the farm in Nebraska when he was about twenty years old, and is now employed as an abstracter in the City of Portland for himself. He has not been employed by the Oregon and California Railroad Company or Southern Pacific Company since 1910. These examinations made by him of the lands involved in this suit, were made while he was an employe of the Oregon and California Railroad Company. The office in San Francisco designated some of the lands he was to examine, and some of them were designated by Angell & Fisher, and he obtained his instructions principally from Angell & Fisher. The last examination made by him, he believes, was made under the direction of the California office, receiving instructions from General Land Agent B. A. McAllaster. The instructions were sent jointly to Rees and himself. He found the persons referred to by him as trespassers

upon the lands that he knew belonged to the company. He knew the company owned, or claimed to own the land. He has had two or three years experience in the timber, while he was in the employ of the company, and that is the only experience in the timber he ever had. He cruised timber in Clackamas County and assisted in cruising timber as compassman in Multnomah, Columbia, Lane, Polk, Josephine, Jackson and Douglas Counties, between 1907 and 1910, inclusive. The earlier cruise was in connection with land that had been contracted to be sold by the company and had reverted. He does not think, take it all in all, that the greater part of his examinations of the land had been made with reference to lands that these men had squatted on in the grant. These particular examinations were made after the suit had been filed by Lafferty in behalf of these parties. He made a good many examinations prior to 1908 in different parts of the grant, but referring to the lands especially in Columbia County, in 20 south, 1 west, that he had mentioned as having been settled upon by trespassers, they were all examined in 1908 and subsequently after suit had been filed by some of the parties at least to obtain title to the land.

Whereupon FREDERICK A. KRIBS, called as a witness on behalf of defendants and being duly sworn, testified that he is fifty-two years old, is a land dealer by occupation and resides at Portland, Oregon, and has resided there since February, 1902. Prior to that time his home was in Minnesota. He has been engaged in the timber business, buying and selling timber lands, making

investments or handling timber lands, about twenty-seven or twenty-eight years, and his experience in that line has been principally in Minnesota and in the Coast States of Idaho, Washington, Oregon and California. He is acquainted with the unsold lands of the Oregon and California Railroad Company, inuring to that Company under the Act of Congress of July 25, 1866, and May 4, 1870, involved in this suit. He is more familiar with the lands in Coos and Douglas Counties and some few lands in Curry County, and is familiar in a general way in Linn and Lane Counties. He is not very familiar personally in Washington County, although he has had men out examining lands in certain parts of this County. He has been out in Eastern Multnomah County, over in the Bull Run District, up towards the Mt. Hood country. He has ridden and driven through that part of the country a great deal. The character of these lands is principally mountainous. To which complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the character of these lands within the limits of these grants, the settlements or possibility of settlements thereon and public entries thereof.

Whereupon witness further testified that these lands in Multnomah County are valuable for timber. He has made no personal examination of the timber lands of the Company in Yamhill County. He has driven through the country a great many times, but has been only on the farming lands in Yamhill County. The unsold land of

the Company in Clackamas County is all timber and mountainous country. He has made two trips into that country. Generally speaking the character of these lands is mountainous and timbered, and some are burned over lands. At the present time these burned over lands would not have much of any value. They are too remote. He presumes they could be used in the summer time for a short period for grazing land, or something like that. In the mountainous country, stock is generaly put in, in the months of May, June, July and August. Snow or heavy stormy weather in the higher altitudes generally keeps them from going in earlier. About that time of the year, they drive their stock in. Right back of Falls City in Polk County, the lands are mountainous and timbered and he would regard the value of these lands as pretty nearly wholly for their timber. The Abiqua and Molalla are rivers heading up in the mountains, especially the Abiqua. Abiqua basin is extra heavy timber and he is familiar with that particular vicinity. The other range of mountains, through there, he would assume is timbered the same in like way. He is not familiar with the lands situated on the Santiam River adjoining Lane County, near Mehama in Marion County. He has not been in that section. He would say that the value of this unsold timber land in Marion County is chiefly for the standing timber. He has no actual personal knowledge of Alsea Bay, which is outside of the grant, but has been all over the country west of the Alsea Basin and knows it is a timbered country from hearsay. His holdings in Lincoln County lie west of the Company's

lands. He has made no examination in Benton County. Thomas Creek, Santiam River, Calapooia and other streams, heading in the Cascade Mountains, which run west to the Willamette River, are all high in the mountains and the country as a whole is what is called a mountainous or timbered country and these lands of the Company situated in Linn County, are chiefly valuable for the timber. In a general way, he has knowledge of the timber lands of the Company in Lane County, as he owns a good deal, a good many of the even sections. It is all high and mountainous country and principally valuable for its timber. He thinks the Railroad Company had lands in 15 south 2 and 3 east, 14 south 2 east and 15 south 1 and 2 west, and that his Company acquired a good deal of lands over in that country. The timber lands in Lane County as compared with other sections of the State are very heavy timber lands, excepting the old burns. The country is rough and mountainous and as a whole he would say, would be at this time, wholly valuable for its standing timber. These old burns are pretty much the same all through the mountains. The green timber has been killed and old stubs standing, or the timber has fallen upon the ground and there is generally a thick growth of brush. It is commonly reputed that these fires have been caused from fires that have gotten loose from time to time, from careless hunters or campers, though a good many burns were known to exist in places before some of the old time settlers came there over fifty years ago. These burned over lands in some places would have a very fair soil. In other places

they would be rocky and poor and not of much value. Where the good timber is, through the Cascades, he would say the elevation would go from 1200 up to 2500 feet. Vegetation on these burns would be mostly different kinds of brush. In places, there is found pea vine, and in real open spots with not too much brush, little tufts of grass here and there and different kinds of brush, hazel brush, salal and vine maple. There is not very much of anything that could be done to use these burnt over lands at this time that would bring much of anything in the way of income or money. There are some spots where there might be here and there a little feed, now and then a creek coming through and the country being open, there might be a little grass, but one would have to have quite an area of that country, if he were going to make a stock range or stock proposition out of it.

Whereupon witness testified as follows:

Q. Suppose that a so-called actual settler should apply to purchase 160 acres from the company at $2.50 an acre, and the company should sell it to him in good faith, for the purpose of allowing him to make settlement on it, giving him a good title, and he was expected to go upon the land with his family, and fence it, and devote it to any useful purpose, such as grazing or agriculture, and make his living, confining his pasturage to that quarter section, what, in your judgment, would be his ability to make a living on any of these quarter sections in that way?

A. Well, over these mountains, on account of the

bad weather and conditions generally speaking, I do not think he could make a living. I do not think he would stay there.

Q. Suppose that the company had adopted the policy of selling all of these lands, timbered and otherwise, to actual settlers, in quantities not exceeding 160 acres, at a price not exceeding $2.50 an acre, and had conveyed to these so-called actual settlers these timber-lands with the understanding and expectation that they would go out on these timber-lands, attempt to make settlement, make a living, make a home, what use would these actual settlers make of these lands and what would become of the title?

A. Well, they would hold it until there was a good——

A. They would hold it according to their means, until there was a good market, and they would sell the timber to some lumberman or speculator, and it would all be owned by lumber companies now, or the most of it.

Q. What would be his ability, or what would be the possibility of a man being able to make a living as a settler on one of these quarter sections of timber-land?

A. Well, he might make some kind of a living, but it would be a very poor one, if he confined it strictly to one of these quarter sections high up in the mountains.

Q. Are these lands or not fit for actual settlement?

A. I would not say they were fit for settlement.

Whereupon witness testified that he is pretty familiar with all the timber lands in all parts of Douglas County, odd and even sections. He is familiar with some lands, knows more about them than he does others, but in a general way he is familiar with nearly all of the lands that are colored on that map, "Defendants' Exhibit 259." There might be some to the extreme east side that he does not know much about, on account of their location being so far up streams, but generally speaking the greater part of these lands are valuable for standing timber and in many townships he has made personal examinations and estimates. The character of the timber in Douglas County on these lands, is fir, and in the higher mountains principally old yellow fir; in the lower altitudes, red fir with now and then a little cedar and other kinds of timber but it is principally fir timber. The topography of the country where these timber lands are situated, are rough and mountainous and the elevation runs from 1200 to 3000 feet but through the upper Umpqua he would think about 2200 feet would strike a general average. He thinks the lands owned by the Railroad Company in Coos County would be the lands that would be up on the Coquille waters. He has selected a large part of his Company's lands on the head waters of the Coquille and these remaining lands he presumes are the ones that were not purchased. They are heavily timbered lands as a whole and their chief value is timber. He is acquainted with the timber lands of the Railroad Company in Curry County. In Curry County, these lands are in Townships 34 and 35 south, ranges

11 and 12 and township 31 ranges 12 and 13. 31-12 would be in Coos County, 31-13 mostly in Curry County. They are principally heavily timbered lands. Township 35, ranges 11 and 12 must be these green lands shown on the map. They are on the Rogue River and there are a few lands that he cannot personally tell about. The topography of the country, of these lands in Curry County, is mountainous. He is acquainted in a few places in Josephine County but has not an active personal knowledge, as he has never done much work personally in that country. He has had men in different parts of the country and along back from the roads and mountains generally, a rough mountainous country, and the lands where there is timber, are valuable for timber. In other places, there would be old burns or openings. He has gone through there in a general way, but has not done a great deal of work in that country. The character of the topography is mountainous. There are some places where the soil would be fair in Josephine County in these timbered areas. Other places quite a bit of rock and more like a mining country. Up the Rogue River in Jackson County there is land known as the Hopkins tract on Jenny Creek, he thinks that would be in the south side of the county. There is a tract known as the Goodfellow tract on the Upper Rogue on the east side which is fine sugar and yellow pine and the odd sections in through that end of the country are also fine timber, and the land is chiefly valuable for timber. He has not been personally in the western part of Jackson County on the Applegate Creek. He had

a man or two in there. Lands that are not covered with timber in Jackson County, but which are covered with chaparral, manzanita and other such like small growth, would have to be used for grazing land, something like that. The topography of these lands, both timber and otherwise, is all high elevation, mountainous. A man could have a tract of that and use it for summer grazing for cattle and sheep and so on. If a man was in the stock business for a living, and had 3000 or 4000 sheep, he ought to have about 14000 or 15000 acres of land, to graze them on. He does not know what the Forest Service figures this pasturage at, per acre, of these burned over and timber lands to sheep men or other stock men per annum, but he rents land east of the mountains in the same localities and gets seven and a half cents an acre for them. They are able to graze these lands generally from April to in September. A man could not make a living at a rental of seven and a half cents an acre for 160 acres of this grazing land. It would not amount to anything. He spoke of some lands known as the Jenny Creek country but he could not say from memory whether that is located just in Jackson or Klamath County. It is a very high grade timber on that stream. Jenny Creek as shown on this map is in Jackson County. Most of these lands to which he refers are in Klamath and part in Jackson Counties. That is fine timber, some of the best in the State. These timber lands in Klamath County are chiefly valuable for the standing timber. He is not very much acquainted with the unsold lands of the company in Columbia Coun-

ty. He has been along some of the roads but has never been interested in the timber there. He has had men out in Tillamook County but has not been there personally. He optioned and spent a lot of money in examining two different tracts of land in Tillamook County. It was very heavy timber land but he did not buy it. These lands that he optioned would be in the edge of the grant, just outside the indemnity limits of the grant of July 25, 1866, and within the limits of the grant of May 4, 1870. These lands that he had under investigation were heavy timber, very rough and mountainous. He has no knowledge of the unsold lands of the company in Washington County. He is acquainted with the holdings of the Simpson Lumber Company to an extent, in Coos and Douglas Counties and is acquainted with the timber holdings of the C. A. Smith Lumber Company in Coos and Douglas Counties and has been over a great many of these lands personally and he thinks he is able to judge the timber character of a 40 when he sees it. There are two ways of ascertaining the timber stand on a given forty, with a view of buying or selling and that is what they call "double running." The land is all run out in its legal subdivisions by use of the compass and is checked up on the different points to see that it is correct, then they make a tree count, or if the timber is standing pretty evenly all over the forty, measure half acres or acres here and there, strike a general average of what it is thought it will average per acre, right through and then multiply by the number of acres of timber, and have a

scale measure on the stump and do the figuring from the scale. The location of the unsold timber lands in this grant in western Oregon and the even sections owned by different people are considered good and the timber belt is considered about the largest in the United States. The predominating commercial tree in that territory, is Douglas Fir, which ranks as a tree that will make very good lumber. It is secondary in value to high grade pine but is considered very fine lumber. Referring to "Defendants' Exhibit 315" witness says that he has been pretty much through all that country where these pictures were taken. He could not identify from the picture, the identical 40 acres of land that any particular picture was made from, but knows these pictures were all taken down in Mr. Smith's timber and he knows the man who took the pictures. He has two or three of these himself and these pictures fairly and correctly represent what they purport to show. Relatively speaking the timber lands of Coos County is a larger belt than in other localities and it is heavy in point of stumpage. It will average all about as well in quality.

Q. What is the highest price for which a quarter section of a large holding of timber-lands has been sold within your knowledge and experience in this part of the State of Oregon, western Oregon, for instance?

"A. Where I am posted, the last two or three years, there were quarter sections sold from $4,000 up to $12,-000 per quarter. But before that it was some cheaper, as there was not a great deal of opposition in picking up timber then."

Whereupon witness testified they are asking for timber lands in the locality near Timber in Washington County in the Nehalem and Tillamook, since the railroad went in, from $2.00 to $3.00 per thousand for their stumpage, and there are quarter sections there that will go from ten million as high as twenty to twenty-one million to the quarter section. Some of these quarter sections could not probably be bought short of $60,000.

"Q. Well, then, if an actual settler under this law should apply to the company to buy one of these quarter sections at $2.50 an acre, of which there are some 7,000 intervening in this case, actual or potential so-called settlers, his quarter section would cost him $400. Would he or not be able to sell one of these quarter sections for the prices that you have named?

A. He would get a good fat price as soon as he would get his title."

Whereupon witness testified that he had no connection with the Oregon and California Railroad Company or the Southern Pacific Company in business or otherwise and his business is that of dealing in timber lands principally.

Whereupon on cross examination witness testified that he had been engaged in the timber business practically all of his business life, twenty-five to twenty-seven years and since coming to Oregon he has been engaged in the timber business as a timber broker and an investor. He did a great deal of cruising the first two and a half years he was here in Oregon. The first two years, he

would have so many varying reports as to what there would be on a quarter section of timber, that he put in a hard week's cruising here, on some of these lands to find out who was right and who was wrong according to his judgment. He started out in the timber business and cruised for a great many years and that is all he did as a starter for many years. Since coming to Oregon, as a whole, he has cruised comparatively little. That cruising was in most all parts. He had generally made it a point, and would today, of going into a brand new territory, to go out and check up lands here and there and find out for his own satisfaction about how he thought it would average per acre, or how the tract would go. He depended largely upon reports of cruisers that he had tried out and tested. He does not personally go over everything in great detail as to lands that he purchases or invests in or sells or buys for other people. His knowledge concerning the lands included in this grant in Multnomah County result from his having driven through Multnomah County and he has been out over the timber belts and could observe them as he was driving through them. He was simply driving along the public highways and has been off on some of the smaller roads. He has been offered trades for property in town, personal or real, for lands alleged to be timber. In some instances they were and in some they were not; he went out to look up some of that himself. He does not know that he can give the location by township and range, without looking it up, but some was out in what they call Sandy River waters, and one piece out

near Cherryville, this side of Estacada. He has not made any extensive personal examination of the lands in Multnomah County. In Clackamas County he made a run in through some timber some years ago and then put men in there and he checked up some of their work. Take the county as a whole he has inspected a very small portion of the lands in that county. He has been out on one or two of the streams and ranged around through there and saw that it was a heavily timbered country where he was. It would not be a very large area of what he would call any detailed cruise but he got over quite a bit of the country, ranging through it on roads and trails to get general ideas of the country. He was in what they call the Abiqua Basin country. There is a smaller stream coming in through there, either the Clackamas or Molalla waters. He has had men in two or three different locations up in the mountains of this county looking up timber but has not been personally in any other portions than he has mentioned. As to Marion County his information is directly from men he sent there and is not personal knowledge. In Linn County he has been pretty much in Township 12, ranges 1, 2, 3 and 4; township 13 south, ranges 1, 2, 3 and 4; township 14 south, ranges 1, 2, 3 and 4; township 15 south, range 3 east; township 15 south, ranges 1 and 2 west, upon the Santiam and Rock Creek waters through there. In Lane County, he made one trip up the east or coast fork of the Willamette and was over on the Mohawk waters and was up above Wendling on that little railroad and back into the timber there.

A few miles in Jackson County, he looked into a lot of scattered lands that were offered to him east of Medford and then he was up in the Jenny Creek country looking over what is called the Hopkins tract and then up the Rogue River and looked into what is called the Goodfellow tract. All together he should think he ran over in a general way 140,000 to 150,000 acres. He went all through the different sections and examined now and then, a forty here and there, to verify other people's work. He made quite a general inspection in Josephine County about 10 or 11 years ago, and concluded not to invest and so his personal work has mostly been in the counties on this map—Douglas, Coos and Curry Counties—referring to "Defendants' Exhibit 312." In Josephine County he made one trip quite a number of years ago but cannot name the creek now. It was no main river. He went up two different creeks and went into a very high rough country, saw a good deal of timber, but a man would have to have a very large area in order to have a large amount of stumpage in that particular part where he was. He could not give the township and range of the general locality. That was 11 years ago. In Douglas County he has been pretty much over all the lands owned by the C. A. Smith Company, also by the Pillsbury, Kribs Company, and what is known as the Shook lands, and several other tracts. He has been pretty much over the timber belt all over Douglas County on the Smith and Umpqua Rivers and its branches and on that part of the Coos River that heads into Douglas County. A large part

of the lands he has mentioned, would be located in township 27, ranges 7 and 8, township 23, ranges 4, 5 and 6; townships 27 and 28, ranges 8 and 9; townships 24, 25, 26, 27, 28, 29, 30 and 31, ranges 9 and 10; townships 26, 27, 28, 29, 30, 31 and north part of 32, range 10. In fact he has tripped that whole country pretty nearly through to the ocean. In Coos County he thinks he has been in the part of range 9 which is partly in Douglas County; that would be townships 26, 27, 28, 29, 30 and 31, range 9; then in township 25, range 10; townships 25, 26, 27, 28, 29, 30, 31 and 32, range 11, townships 27, 28, 29, 30, 31 and 32, range 12. Range 13 is partly in Coos and partly in Curry County. He has been pretty much in nearly everything that was bought there one time or another. He has been around through these lands. He only knows the railroad lands in Lincoln County from hearsay. His lands are farther to the west along the coast.

"Q. Now, you spoke of leasing land for seven and a half cents an acre for grazing purposes. You get other consideration in addition to that, do you not, in the way of fire protection and removing of underbrush, removing the fire risk?

A. Well, the contracts claim that they will keep a watch out for fire, but there is no brush clearing, or anything like that.

Q. Naturally stock running through the timber would naturally remove a great deal of inflammable material, would it not?

A. Well, if you put in a band of goats, they would eat quite a lot of stuff. I don't know as sheep do very much but eat the grass."

Whereupon witness testified, that in taking the elevations in the Coast Range they used the barometer nearly all together, and he took the elevations in many places. As to elevations, he testifies in some cases from general knowledge and in other cases he took the elevations himself. They required, that their cruisers should take the elevations everywhere in the mountains and as to a great many elevations he is depending upon the reports received from the cruisers. His interest in lands in Oregon are principally with the corporation, in the stocks, etc., so that they own their stock together. He does own some personally but could not tell exactly without looking it up, several thousand acres. He is interested in probably somewhere about 100,000 acres all over the State of Oregon and has a substantial interest in these lands which are all valuable. He has been dealing almost all together in timber lands. In making purchases of lands, he looks after their timber value. In the last few years he has had also a soil examination made, but only in the last three or four years. He purchased principally for timber. Logging conditions and the stand of timber would outweigh any of the soil possibilities in his estimation. He knows about where the lands were, where these photographs shown in the magazine were taken, as shown in "Defendants' Exhibit 315" but not exactly, the exact spot. He was not there when the photographs were taken, but knows when the work

was going on and he helped arrange and lay out the work. He really has no personal knowledge that these are photographs of lands in Curry County and he did not assist in doing the work but sent men to help them. He knows they performed the work to his satisfaction.

Whereupon upon redirect examination witness testified that he did not recognize the photographs shown at page 49 of "Defendants' Exhibit 315" as that of any particular timber that he knows, but he can take one into a great many places of timber that Smith owns and he owns and get just as good a picture as that. The photograph is a fairly good reproduction of the scenes of forests on some of these lands of the C. A. Smith Timber Company. He cannot tell where the picture shown on page 51 of "Defendants' Exhibit 315" was taken but knows of several stands that would make a picture as good as that. He has seen timber of that kind in Curry County. The picture shown at page 53 of "Defendants' Exhibit 315" would be one of these mountains or ridges of timber taken from a high open spot. He has seen timber stands of spruce such as shown at page 55 of "Defendants' Exhibit 315." The tree shown at page 65 called "Second growth" is a young er tree than the old growth. He always figures that the same kind of a tree, but the second growth is a young tree. He has seen stands of second growth timber on this land of the C. A. Smith Timber Company in Coos County, such as shown in that photograph. The view shown at page 67 of "Defendants' Exhibit 315" is a fairly good mountain view of the location of the timber

holdings of C. A. Smith Timber Company in Coos County near Marshfield. He has been all down through that country in that section where that is shown. The view shown at pages 68 and 69 with the very high mountain in the distance, looks like it might be a scene taken from Johnson Mountain looking towards the south fork of the Coquille and the headwaters of the Sixes River, and that mountain looks something like Johnson Mountain. One can find in various locations trees like that shown at page 77 of "Defendants' Exhibit 315." They are very large and nice trees. Trees could be found like that on the C. A. Smith Timber Company's lands and on other lands and on the lands of the Oregon and California Railroad Company. There is such timber as is shown on page 79 of this exhibit on the head of the Sixes. Port Orford cedar is what is called white cedar. It is of the cedar family. The bark looks about the same as the red cedar tree. The wood is white and has a very strong odor and is used mostly for finishing and sometimes in boat building. It is practically all situated in Coos and Curry Counties with a little in Douglas County and he has never heard of it being anywhere else in the world excepting in this section. He can find spots in this heavy timber on the lands of the C. A. Smith Timber Company in Coos County that one can get a picture like that shown on page 99 of this exhibit. The capacity of the C. A. Smith Timber Company's mill at Marshfield, he thinks now would be about 600,000 feet per day and it is about the most modern mill of which he knows. The C. A. Smith Timber Com-

pany ships at the present time by vessels to California where that company has a distributing point. The transportation obtained for all of the timber on the Coast Mountains or streams leading into the Pacific Ocean is principally by the steamers, in some instances by logging railroads. The Portland mills secure their logs largely by hauling them into the Columbia River and its tributaries or by having a logging railroad from the timber to the Columbia River and then towing their logs to the Portland market. The Portland mills get their lumber to market by water and by rail. The cut or manufacture of the mills in the City of Portland is about 600,000,000 feet per year ordinarily and he thinks probably 50,000,000 to 75,000,000 of that goes out by water and the rest by rail. Of that he is not sure, he has heard the relative amounts but cannot remember. The railroads carrying lumber from Portland are the Southern Pacific Company, the Northern Pacific and what is now called the North Bank, Great Northern, or Spokane, Portland and Seattle Railway Company. The railroad to Puget Sound from Portland would be the Northern Pacific and the Oregon-Washington Railroad & Navigation Company. He does not know if that is the Southern Pacific or who owns that now, that is the Oregon-Washington Railroad & Navigation Company. The Chicago, Milwaukee and Puget Sound Railroad runs to the Sound but he does not know whether it has connections at Portland or not. The general character of Western Washington as to lumber manufacture and timber is a rolling country and these logs are either

gotten out by the streams or by railroads and the lumber marketed by rail and by steamer. The country is principally all timber. He thinks there is more lumber manufactured in Washington, taking the small mills out on the roads, than in Oregon, but the two States manufacture much more than any other state. He was subpoenaed to be a witness here and he has an interest in a small tract of these Oregon and California grant lands purchased from Acting Land Agent Andrews several years ago and he bought some tracts that were assigned to him by other people and he would say that he is interested in about 4,000 or 5,000 acres situated in Coos County and he thinks they are involved in one of these forty-five suits brought by the United States. The Pillsbury Lumber Company is the defendant in the suit involving the lands in which he is interested, referring to the so-called Innocent Purchaser Suits in which the United States is plaintiff. The Smith-Powers Logging Company does the logging for the C. A. Smith Lumber & Manufacturing Company. He supposes that the picture shown at pages 84 and 85 of "Defendants' Exhibit 315" is that of the mill plant of the C. A. Smith Lumber & Manufacturing Company at Marshfield and it is a fairly good picture. He has been there and recognizes it as such. He has seen such boards manufactured by mills in Oregon, as is shown at pages 84 and 85 of "Defendants' Exhibit 315" and this is not an imaginary picture scene. He has seen the lumber yard or unite yard of the larger Marshfield mill of the C. A. Smith Lumber & Manufacturing Company shown in the pic-

ture at pages 94 and 95 of "Defendants' Exhibit 315" as it is moving its lumber more or less all the time. This is a picture of the lumber yard and he believes it to be a picture of Smith's yards. Marshfield is on Coos Bay.

Whereupon on re-cross examination witness testified as follows:

Q. Mr. Kribs, you do not want to convey the impression in the record here that the photographs of this timber that is referred to in Defendants' Exhibit 315 is a fair showing as to the stand of timber on the O. and C. lands, do you?

A. I have not said that.

Q. You do not want to convey that impression?

A. You can go on the O. and C.—you see those pictures there, Mr. Smith would have a great many lands in places well timbered, where he could not go and get probably as nice a picture as some of those. He pictured nice places here in a good body of timber. Now, you can go on the O. and C. and pick out lands, and you will get nice pictures like that.

Q. What was the purpose of that publication, Mr. Kribs, Defendants' Exhibit 315? I understand from your testimony that that was prepared partly under your supervision.

A. These photographs, I picked out men who were familiar with all the roads and trails, and knew all that part of the country, in good shape, and had them go out with the photographers who came out from Chicago, and did not know anything about timbered lands or

woodcraft at all. Had reports to get very nice pictures and how the work was going on, although I was not there myself personally.

Q. This is what you might term a booster issue of the publication that it purports to be?

A. It was really, you might call, an advertisement, gotten up by the American Lumberman at Chicago, and they probably worked the deal up for Mr. Smith, as he was starting out in this country, a good advertisement to show up his plant, timber, and general resources, make him better acquainted, and be a good thing for him, and they got him into it.

Q. Those photographs in that magazine show what might be termed the best stands of timber in Coos County, don't they?

A. Well, I don't know as you would say it was the best, but they would pick out in a good body of virgin timber, and then get pictures that would make nice pictures—get good pictures they took for the advertising.

Q. This stand of timber, you do not attempt to say it extends over this grant, such a stand as is shown in the photographs here?

A. No, there are some photographs there would not be any stand like that in the world, even—redwood.

Q. Some of the finest timber in the world, then, is shown in those photographs?

A. Some of the nicest places they could find, of course, which would be a higher average than a whole

large body of timber; but Mr. Smith's lands have been very carefully selected, and are generally all pretty heavy right straight through.

Q. Those photographs are not taken within the limits of this grant, are they?

A. There would be some of those pictures that were taken over in the Coquille country that would be right in where the company has got quite a large acreage, as I recollect.

Q. Coquille is not within ten miles of the limits of the grant, I believe, is it?

A. I should think it would be farther away than that.

A. There are places where I think some of those pictures were taken, up in the Eagle Mountain country, up in 31-10, some in 31 and 32-11. I think they were up there, and the Railroad Company have a large area in there.

Q. Do you know, as a matter of fact, where those photographs were taken?

A. Well, I had reports from one of the men that they were going up to take some pictures up on Eden Mountain, they were going to Cold Creek, which would bring them in 32-11. Then they swung around, and took some up the Coos River, some east of Marshfield, down near the Beaver Slough country, and then whenever these camps were located, which would probably be a little east from Marshfield, they took pictures gener-

ally all over the whole tract. That was the idea.

Q. You only know that from reports?

A. The orders were given to get pictures everywhere through the whole tract.

Q. I say your testimony as to that is based solely upon the orders that you gave, and the reports that you received?

A. Yes.

Q. Coos County contains about the heaviest stand of timber in the timbered belt there of any county in the state, does it?

A. No, I don't know as I would say that. It is about as heavy, will average about as heavy right straight through, take the main large body. But we have other locations in the state that will average up very heavy indeed.

Q. This locality where these photographs were taken is unusually heavily timbered?

A. Yes, that is extra nice timber.

Whereupon witness testified that he is agent for one of the C. A. Smith corporations known as the Linn & Lane Timber Company, which has very large timber holdings in Linn and Lane Counties. He is worth and owns property of more than several hundred thousand dollars and would say that he has spent about twelve years of good hard cruising, had a pre-emption claim, familiar with that class of people and saw them all through the wooded country and had about as little to

eat as the rest of them had and he has a pretty good idea what a fellow can do in these wooded countries and if one would put it away back in the mountains he can make it a good deal stronger. All of the lands in which he is interested are generally remotely located. They have at this time a speculative value and he could not give the true value of the same. He could not do it very well. It would be all guess work but he would consider himself to be worth several hundred thousand dollars.

Whereupon on re-direct examination witness further testified he began life as a hard working boy and knows what the needs and wants of the poor man are.

Whereupon W. R. WHIPPLE, called as a witness on behalf of defendants, and being first sworn, testified, that he is sixty-seven years old and resides at Grants Pass, Oregon, and has resided in Josephine County for about fourteen years, about that time at Grants Pass and the balance of the time in the southwest portion of the county. His business during that time has been surveying and civil engineering. He has been deputy County Surveyor, and deputy United States Mineral Surveyor for four years, and has also done some work in that county in the location of timber lands, or timber claims and is familiar with the unsold lands of the company in Josephine County. He has been over most of the grant in the near vicinity. The grant is mostly mountainous in Josephine County. He has surveyed land, run ditch lines and done mineral surveying in general when he went over the lands. In performing that work he became acquainted with and has knowledge of the charac-

ter of the lands in that county. It is mostly hilly ground. To which testimony the complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof. Whereupon witness testified that they are hilly, and the soil is generally poor, mostly too broken to be cultivated; in fact, there is very little that could be cultivated. Probably about fifteen per cent of these lands in Josephine County are covered with timber of a merchantable character. He is making a rough estimate from his knowledge of the country. The balance of most of the land has been burned over. There has been timber on it sometimes, it is generally brushy and rocky, but part of it along the Rogue River district is decomposed granite, and it has very steep hills. He does not consider any of these burned over or decomposed granite lands as fit for any kind of cultivation, unless there may be some very small tracts. There would probably be ten per cent of the unsold lands of the company in Josephine County that would be covered with chaparral and manzanita. He would not consider that character of land of any value, except there might be some near a town where a person might possibly make a home and a living out of some other business. It is close to Grants Pass and a man might use it for a site to put a house on, but he would have to do something else to make a living, besides agricultural pursuits. There is very little

of this land close to Grants Pass that a man could live on. The land that is rocky, is unfit for cultivation. All of the ground that is really fit for cultivation, has been settled years ago. It had been sold in the early days and bought from the railroad company and occupied by small settlers, and then a great portion of the land was settled before the railroad land grant, under the Donation Land law and under other laws. He is familiar with the boundary line between Josephine and Jackson Counties and recognizes Defendants' Exhibit 259, showing the unsold lands of the company in colors.

"Now, assuming that there is that number of acres of unsold railroad land in Josephine County, consisting of 167,480.98 acres, what is the fact as to whether or not there are any lands in that list, that lot, capable of actual settlement, upon which a home-builder could or could not make a living?

A. I doubt whether there is. There might be once in a while a quarter-section where they possibly could by working hard, but I don't know of any where they could make a comfortable living, with a reasonable amount of work.

Q. This land that is timbered, if cleared, what would be the character of the soil as to the greater portion of the lands in that county?

A. It is nearly all poor, rocky, shaly soil.

Q. Would it or not be susceptible of agricultural use after it was cleared, even?

A. It would not.

Q. Now, Mr. Whipple, what is the fact, if you know, as to whether or not the settlements in Josephine County that have been made in the history of the state, haven't been made chiefly, if not almost entirely, on lands taken up under the Donation Act or settlement laws previous to the grant to the railroad company, as to whether or not these settlements have not absorbed practically all the land in that county that are fit for agricultrual uses?

A. They have.

Q. That is the fact, is it?

A. Yes, sir.

Q. Now, are you familiar with the topographic map of the United States, issued by the United States Geographical Survey, that has recently been placed in the hands of Deputy United States Mineral Surveyors and other officials of the United States?

A. They are on sale by the Government.

Q. You have seen those maps, have you?

A. I have."

Whereupon witness further testified that he is familiar with Defendants' Exhibit 310, being a topographic map of the United States, issued by the United States Geological Survey and recently placed in the hands of deputy United States Mineral Surveyors and other officials of the United States called "Riddles Quadrangle," showing the topography of a section of the country from Roseburg south. Whereupon de-

fendants offered and there was received in evidence said map, marked Defendants' Exhibit 310, which is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such. Whereupon witness testified that Defendants' Exhibit 311 is a map of the United States Geological Survey, prepared by George Otis Smith, Director, showing the topography of the quadrangle, known as the "Grants Pass Quadrangle." Whereupon defendants offered and there was received in evidence Defendants' Exhibit 311, which is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such. Whereupon witness testified that the small black dots on these maps represent buildings of all descriptions and kinds and he thinks every building in the whole quadrangle is marked on the map, all sorts, cabins and houses, barns and buildings, and mining camps and everything of that kind, including cabins of homestead claimants, or any cabin built by any one, whether occupied or not. It also shows mines, roads and trails, mountain peaks and buttes and bench marks with the elevations. Everything is explained on the back of the map. Whereupon on cross examination witness testified that he had resided in Oregon about twenty-five years, fourteen years in Josephine County. He had never resided in Jackson County, but had done some work in there, surveying and cruising. His occupation during this time has been that of a surveyor. He has prospected some and located a few timber claims—cruised for timber. He was deputy United States Mineral Surveyor for four years and deputy

County Surveyor about 1909, 1910 and 1911, but not regularly employed during these three years as such deputy County Surveyor, was employed only as work was done, as called for by people living there, temporarily as the work required, but was deputized all of this time, doing work whenever it was called for. Several years ago, he was employed during this period by the Oregon and California Railroad Company, classifying lands of different kinds and attending to protests of mineral cases. It has been about ten years since he has done any work for the Railroad Company, and was employed approximately only eight or ten months, and then was a kind of an agent for the company for these lands in the Illinois Valley in Josephine County, for three or four years. He attended to all the cases wherever they had land applications; he went and looked at the lands to classify them and establish values. In classifying lands, he went out and examined the lands and classified them as to what they were best adapted to, agricultural or grazing, or whether timber, etc., made a statement exactly what they were and gave the general description of each 40-acre tract, in every section. He received his instructions as to what land to examine from Mr. Andrews, acting land agent for the company at that time. Descriptions were sent to him of each tract, that he examined, or 40 sometimes. Sometimes there were only forties that were unsold in some sections. He examined only the lands, descriptions of which were sent to him. These were not lands that had been applied for, to be purchased from the company. Those that

were examined for classifying, except a few tracts that had been applied for to be purchased from the company, but most of the lands that he had examined for the company were not in Josephine County. In Josephine County, he only examined those lands that people applied to purchase. It is not true there are scattered throughout Josephine County a great many very fine ranches and farms. There are not very many good, nice farms in Josephine County. There are a great many fruit ranches in Josephine County, but he does not consider them first class. They have been asking pretty high prices for these fruit farms, and marketing quite a good deal of fruit land down there, during the last four or five years especially. He knows in a general way, pretty well, but not altogether, what lands are railroad lands, and what are in private or public ownership, in Josephine County, and knows that there is a big body of railroad land in general sections or communities. He has looked over the railroad maps and run a great many lines, and knows from running the lines which are railroad and which belong to settlers, and he has looked up a great deal in the assessor's office to find out. He often needed to know the ownership of different tracts. He has testified that lands that were susceptible to agriculture within the limits of this grant had been taken up under Donation Land claims and other entries, nearly all of them. These granted lands, he thinks, have been withdrawn from entry since about 1870 and he knows that the railroad lands could not be entered by a donation claim, or homestead entry, or any entry pro-

vided for by federal laws, not at present; all that was taken up, was taken before the land grant, that is, all that was obtained from the Government. Then there is some that has been purchased from the railroad company. He attended to the sale of quite a number of pieces that had been contracted for, at least, from the railroad company. His acquaintance with these maps, Defendants' Exhibits 310 and 311, has been obtained by purchase of them from various people, who handle the same through the valley, and perhaps from some Government officer. Whereupon on redirect examination, witness testified that these fruit farms or ranches referred to, are situated along the Rogue River, and all of the ground nearly that is surveyable, that is reasonably level, so that they can plow it, has been planted to orchards—fruit trees and grape vines and such things. None of these fruit farms or ranches that he knows of, are on railroad lands.

"Q. Is it or is it not true that the fruit ranches are mainly in the Rogue River Valley, on lands that were obtained from the Government of the United States under the Donation Land law and the other settlement laws of the United States, and not on railroad land excepting on occasion where lands had been sold in the early days to purchasers?

Mr. Rabb: Objected to as leading.

Mr. Fenton: Yes, it is leading. I admit that. You may answer.

A. That is true."

Whereupon, **FRED H. McCLURE**, called as a witness on behalf of defendants, and being duly sworn, testified that he is forty-two years old, resides at Portland, Oregon, and is a photographer. He has been a photographer for ten years. During 1907 and 1908, he took a number of photographs at the request of Angell and Fisher. Referring to Defendants' Exhibit 270 witness testified that he took these photographs of this land, and made the notations on these photographs, explaining each. To which testimony complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this objection should be considered as taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof. Whereupon witness testified that these photographs correctly represent what they purport to show. Homer D. Angell accompanied him on one trip when these photographs were taken and A. W. Rees and Ben Irwin accompanied him on all the other trips that he made. One of these three was present at the time each of the photographs was taken. He cannot state whether or not Angell accompanied him at that time and was present when the photographs were taken to which the name of "Angell" is attached to the memorandum on the photograph; and he cannot positively swear that Angell was present when he took the pictures that Angell had his name attached to, but he can say that one of the three persons mentioned was present at the time each of the photographs was taken.

Some of these photographs were taken in Columbia County. They went to Houlton and then went west from Houlton by wagon usually into these mountains or forests, where these photographs were taken. They could not go by wagon to these claims, a great many of them they would only get access to, over trails. They went on foot by trails usually. The country was extremely rough, and covered with trees. He is familiar with forests and would say that these lands where these various photographs were taken are heavily timbered lands. The predominating tree was principally fir. There were occasionally cedars. Some of these trails were well defined and others extremely hard to follow. He could not say where was the nearest railroad point to these places. He left the train at Houlton on the line that runs to Astoria, formerly called the Northern Pacific. These lands are situated in Columbia County. Some of the other photos were taken in Linn County. The only knowledge he has as to whether these descriptions of the lands contained in this memorandum are correct or not is that he got his descriptions from notices posted on nearly all of the cabins. Those accompanying him in some instances, assisted in verifying the descriptions and locations of the property. Several of these cabins at the time these photographs were taken were occupied. He thinks in one or two cases the people were present. There were not more than one or two instances in which any one was living in these houses or cabins at the time. Most of them were vacant. Some of them had evidence of occupation,—blankets, food,

etc. In most cases, the people that purported to own the cabins, or to claim them, were not there. The McLaffertys were there. The date stated in the memorandum attached to the photographs is about the time when the McLaffertys were there with their families, as well as he can recall it, but he cannot swear to the date. He noticed that one of the McLaffertys had two children. He does not know how long they have been living there, and does not know whether they are living there yet. They did not have anything in cultivation around there, except as shown in the photographs. He took all of the improvements which these people had, on the premises. He tried to show a general view of the surroundings. He does not remember any improvements, and did not see any garden, or grain fields, or orchards or trees planted, or school houses or any other evidences of settlement, excepting these cabins. In one or two cases there may have been a way to get a wagon to some of these cabins, but of this he cannot positively swear. Most of the cabins were pretty close together. There was one case on the other lands on which a man had a cabin, an old homestead which was occupied. He did not see any old homestead cabins that were abandoned and does not remember any habitations of any kind, except the one mentioned. He has taken other photographs for the company in Linn and Columbia Counties and made one trip into Clarke County, Washington, but has taken no others, except that he does recall that he took some photographs in the neighborhood of Bridal Veil, in the Eastern part of Multnomah County. Whereupon on

cross examination, witness testified, that he was employed to take these photographs by the Oregon and California Railroad Company, by Angell & Fisher, who were attorneys for the company. He was employed in taking these photographs, in the actual work of photographing the locations, sometimes they would be out for a week, sometimes a day or two. When there were several applications made for land, they would send him out with Rees and Irwin to take the photographs, but usually they would not go out for one application. He was sent out to take photographs of places which parties had applied to purchase from the company, meaning the McLafferty applications, involved in the Lafferty suits, and described by Lafferty as "actual settlers." In taking these photographs either Rees or Angell usually directed him as to the position he should set his photographic apparatus, in taking the pictures. They selected the spot where he should set up his apparatus and photograph the places, although he had a certain amount of latitude, and was supposed to show the general conditions in different directions. He was working under their direction. They were with him, had charge of his work and directed it, and he received no orders from any one but them. He was engaged by them to take the photographs and naturally took them where they told him. He did not engage in the examination of the lands and he is not a timber cruiser, or anything of that kind. They usually cruised the land and he took the photographs. In each individual case, it depended on the nature of the ground, how long it would take to

cruise it. He would remain on the ground sometimes while they cruised the timber and sometimes he would follow them. He could not say how long he would remain on the quarter-sections, the average time. Usually there were several pieces to cruise in one neighborhood, but it would take but a short time to take the photographs. Sometimes they would be in a week for several claims, located in one spot. They came there and would go out and cruise the land and he took the photographs. They did not stop longer than a day on one particular claim. He never attempted to go over the ground and examine the territory. He could not report on the ground. He carried his camera after the cruisers and had about all he wanted to do, on account of the rough ground. He knows nothing about the descriptions of these lands except as he has testified to the notices and so on, on some of the doors. It is possible that one can so set a camera or photographic apparatus, in taking a picture, that if a house set at the edge of a clearing, in a clump of trees, the picture would show a forest, the house in or on the edge of a forest there, without showing the clearing behind the camera, the photographic apparatus taking nothing but that which is in front of it. The photograph is taken, embracing a certain angle in front of the camera and does not show what is behind it. Whether one can take in a wooded country, a very small area in a photograph, depends on the lens. If one uses a wide angle lens, he can embrace about 75 degrees, if a longer focus lens, one could embrace less, a longer angle. These photographs and these cabins

show a very small area of land, they show probably 45 or 50 degrees angle. The photographs would take about 45 or 50 degrees, probably. None of those cabins or houses shown in the photographs, are very large. The relative area covered by the picture can be compared with the cabins shown on the land, although if the cabin is in the immediate foreground it shows much larger—naturally shuts out more of the distance. In most of the cases, the photographs were taken in different directions, to show the general conditions around the cabins, that is, several photographs were taken of each cabin. Possibly these owners of cabins, or occupants, may have been temporarily absent during his visits there. He was there only a comparatively short time and did not attempt to make a general examination of all that country there. He took the shortest and most convenient route for going in on to these lands, and was not looking for school houses, churches, or anything of that kind. He simply went up there to take the photographs of these lands as he was directed to do. He was glad enough to stick to the trails, without getting outside to look for schoolhouses or churches. Whereupon on redirect examination, witness testified, that naturally any schoolhouses or churches along in there, he might have seen them, and would be near the trail. He saw no clearings out there in those woods, of any consequence, except on a homestead that was not on railroad land. He does not remember any other clearing that was larger than a quarter of an acre. He thinks the man on the homestead had three or four acres cleared. The balance of his land was heav-

ily timbered, just like these. From appearances, this homestead had been there a number of years. The man's name was Schweitzer. He cannot tell how far out from Houlton his place is. It adjoins some of these railroad claims and he had no neighbors for a good many miles, except the applicants for this land, meaning these people that began to make application after this agitation came up to purchase at $2.50 an acre. These photographs Nos. 104, 112, 111, 108, 109, 106, 126, 127, 120, 121, 123, 124, 101, 100, 97, 98, 115, 117 and 118, were taken near Larch Mountain, in Multnomah County, near Bridal Veil, about twenty-five or thirty miles east of Portland. He made the notations that appear on the photographs and he can only identify the location by the notations made on the photographs. These notations made by him appear in the photographs and were made directly on the negative, so there is no possibility of making a mistake. He got the description in most cases from the notices on the cabins, in some cases from the people who accompanied him. He got the description of the name of the applicant, like William Cain, from the notice on the cabin. He is able to verify in most cases, the photograph and the description from his own examination made of these notices, which he now sees in the photograph. Whereupon on recross examination, witness testified that he made certain notations on these photographs, directly on the negative, printed on with the print, so there could be no discrepancy, and made the notations after he returned from the trip. He made notes on the trip, and made the notations on the nega-

tive from the notes he took on the trip. In some cases, he found in his book that he made a record of the different entries or notations on the negative. He knew what section, township or range to put on the negative, because the plates were numbered before he took the pictures. They correspond with the numbers on the negatives. For instance he took No. 18 and put down the section and number and township and the man's name, and the direction in which the photograph was taken, keeping the photograph or numbered plate. They were always numbered. Referring to his book, he was employed in this case nine days in taking these photographs, but this book does not embrace all. His book shows that the photographs were taken between September 24, 1907, and at different times until November 18, 1908, including the photographs of the so-called Lafferty actual settler lands. He charged from the time he left until he got back, as well as while he was on the ground. Whereupon on redirect examination, witness testified that after he got home he would then prepare his negative and make these pictures. Roughly speaking, he supposes he made a dozen trips. He was never employed by the company in any other relation than as taking pictures, which is his own business. He was employed as any other photographer might have been. He took photographs for any one who wanted them. Whereupon on recross examination witness testified, that he put in thirty-seven days and six hours on this work, including the time consumed in going to and returning from these lands, as follows: September 24, 1907, six hours time; September 26, 1907, one day's time; December 17, 1907,

nine days' time; February 1, 1908, three days' time; February 18, 1908, four days' time; May 21, 1908, six days' time; October 31, 1908, ten days' time; and November 18, 1908, four days' time.

Whereupon B. A. GIFFORD, called as a witness on behalf of defendants and being duly sworn, testified, that he is fifty-three years old, resides at Portland, Oregon, and is a photographer by profession, and has been such for about thirty-five years. His place of business is at Portland at present. He took the photographs, Defendants' Exhibit 367. To which complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that the same objection should be considered as taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof. Whereupon witness testified that this photograph is a fair representation of the country covered, the physical objects shown in the photograph, which it purports to show, that the matters stated in his affidavit are correct as stated, except that he does not know what the sections were, excepting as they were pointed out to him when he made the photographs there. He is not a cruiser, but that is the photograph made from the point that they went to on that trip. The place where he put his camera, was pointed out to him by F. A. Elliott, Homer D. Angell and L. D. McLeod. He obtained these descriptions in his affidavit for them, that was the only way he had of doing it. He does not know what the elevation of his camera was with reference to the elevation

shown in the photograph. He knows that it was a good hard climb to get up there. They climbed to a point so they could overlook the territroy, to get a point of view, to show the general lay of the timber and country. He has pretty nearly forgotten which way they went to get there. It is a mountainous country, the picture shows that. At the time he took these photographs he was living at The Dalles. These lands lie in the Coast Range, west of the Willamette Valley, west of Dallas in Polk County. It is so stated on the photographs. He did not keep track of that. It was some time in the spring of 1908, he does not remember the date. Defendants' Exhibit 268 is a correct photograph or panoramic view, taken from near the quarter-post on the east line of section line of section 12, April 3, 1912, and is four photographs in panoramic form; the lower right hand corner of the picture is the point from where he took the picture shown in the upper one. They were taken about April 3, 1912, and correctly represent what they purport to show. He obtained the descriptions of these lands from McLeod, who went with him on the trip. "Eagles' Rest, High Point," is the high point shown in the lower right hand corner of Defendants' Exhibit 268. The country shown in Defendants' Exhibit 268 was almost all timbered, very few clearings. One cannot see any clearings at all in the picture there from that elevation. Referring to Defendants' Exhibit 269, photographs numbered 2942 and 2943, witness says that they were made on an 8x10 plate and enlarged from that. They were made in the spring of 1912, but he does not remember the dates. They are cor-

rect representations of what they purport to show. He cannot state from his own knowledge whether Defendants' Exhibit 269, showing where photographs Numbered 2942 and 2943 were taken, are in Columbia County, only from what they told him, that is, the particular place where these photographs were taken were pointed out to him by McLeod and Roy Woods. The upper large photograph shown in Defendant's Exhibit 269, shows in the picture that there were no openings there, in the foreview, and that it was a solid forest. The back view, according to the angle, of his lens, would give him a distance of about eight or ten miles in prospect or in view, measured in distance from the outside of the picture to the outside of the picture. The dark colors in the distance in the lower large photograph, indicate that it is all timbered. It looks like pretty heavy timber in through there, from his actual vision, that is, what they traveled through was. The length of the prospect or view as shown in the lower photograph would be about the same. It was made with the same angle as the other one was. He does not remember what was the angle of the lens that he used. He would have to measure that, before he could tell, that is a long way off in the distance, it would cover a wide space. The photograph is a correct representation of what was actually there on the ground. He took all the photographs shown in Defendants' Exhibits 267, 268 and 269, and made all of the photographs Numbered 2944, 2945, 2948, 2950, 2951, 2952, 2946, 2947 and 2949, being nine photographs in all, and numbered Defendants' Exhibit 270, about June 28, 1912, and they

correctly represent what they purport to show. He obtained the description noted on the photographs from the plats they had there, which they showed him. He is not a cruiser. Some of these cabins were occupied and some were not. There was certainly no one living on the premises shown in Photograph No. 2949. He could not say as to Photograph No. 2947, he did not see any one there. There was a party at 2952. 2944 was vacant and also 2945 and 2948. 2946 and 2951 are timber pictures. Rees, Wood and Kempton are shown in Numbers 2948 and 2950. There was an old man living in a cabin on 2952. He does not know how long he had lived there. When he took these pictures of the homesteads, about which he has testified, he went by wagon most of the way from Scappoose, leaving the railroad at Scappoose. He took these photographs at the request of Rees. The only other photographs he took for the company, other than those he has now identified and described, was that of a cabin on the first trip, when he got this big panorama. His photographs are known throughout the United States. He took the famous picture of Mt. Hood, showing the shadow of Mt. Hood in the lake. This picture is shown all over the world. He has also taken photographs of Crater Lake, and other points of interest in the State of Oregon, and they are known everywhere. Whereupon, on cross examination, witness further testified, that he was a commercial photographer, and employed a great deal by railroad companies in preparing their pamphlets and books in the way of getting views, etc., and employed by the Harriman Lines, the O. R. & N., and Southern

Pacific Company to do considerable work. A full half circle is represented in the back ground, or far horizon of the photograph or panorama of Defendants' Exhibit 268, it would be a hard guess to state the distance in miles. It would embrace a good many miles in half circle embracing the horizon clear around. He would say, it would be surely fifty miles, possibly seventy-five, possibly one hundred, it would be a half circle. The photograph was taken after four exposures. The half circle would embrace fifty or seventy-five miles away in the distance, and from one extreme to the other, in a full half circle, it might be more than that, that could be figured out according to distance. He assumes that the point where he set his camera would probably be twenty miles across, possibly further, it might be sixty miles. It is not very difficult to judge the character of lands in a photograph a distance of this length, covering an area of this amount, not any of it that one can see, but it is true that one has but a small area of print to show an enormous area of ground, and therefore he could not set out in any detail in a photograph, showing the specific formations of the land. The panorama shows what appears to be a valley, through which appears to run a stream, but he does not know what stream that is. Along the creek there are a few ranches, one can see them there. One could not see them if he was on that point, very clearly, unless he looked for them, but they are there. Everything in sight there shows in the photograph. It would depend on the size of his picture and the distance from the photographing apparatus. Anything one can see

with his eye, one could get with the camera. The peak in the distance shown, is a snow mountain, but he does not know the name. The land in the immediate foreground of Defendants' Exhibit 269, in the upper photograph slopes down, that is the only thing deceiving in the camera, it makes land look more level than it is. When taking a picture of a mountain, it looks lower, not higher, when taken from an elevation. Generally speaking, if one gets onto a high elevation everything before one flattens—looks much lower than it is, when the camera is higher, but when it is lower it looks much steeper and higher than it really is, but those are all made from higher elevations. The photograph in Defendants' Exhibit 268, in the lower left hand corner, is made from a lower elevation that the lands shown in the photograph. The photograph on the right hand side is made from a trail that they went up on. The hills appearing in the background in the lower photograph of Defendants' Exhibit 269, are not very much higher than the elevation from which this picture was taken, if it had been, this timber line would be way up here. They were up pretty near as high as the mountains when they made the photograph. The hills or mountains shown in the background are a considerable distance away, about six or seven miles across, possibly ten, to that point, maybe twenty miles; that is away in the distance; still a range beyond this one. He obtained the descriptions of these lands upon which these photographs were taken, and the area covered by them, from the cruisers that were with him. He did not examine any corners, or know anything concerning the

sections upon which he took the photographs, or area covered by the photographs. He could only estimate the area covered by the photographs by looking at it, and judging it, that is just the area without the description. He was at these cabins represented in these photographs only for a short time while taking photographs. There was nothing in these cabins, except the one where the man was living. He was in and saw the interior of all these cabins. There might have been an old shack of a stove that fell down, something of that kind. They were seemingly deserted. Sometimes McLeod, sometimes Wood selected the spots from which these photographs were to be taken. He was employed by the Oregon and California Railroad Company to make these pictures, and thinks he was paid by checks. He did not go into the timber shown in the background in these photographs, and knows nothing about that except what he could see from where he was. He made no personal inspection or examination. The timber in the background was about twenty miles away he should judge, some would probably be nine or ten miles. Whereupon, on re-direct examination, witness testified, that when he speaks of the area covered by the photographs being sixty or seventy miles, he means to the skyline, as one sees it in the distance. If there were cultivated clearings they would certainly be visible to the naked eye and the photographs or camera would show it. He could show some clearings in this picture, referring to Defendants' Exhibit 268, and there is some in this that did not have any clearings in

sight. There is one there. If it is wished he can point out some clearings along the little creek. Referring to Defendants' Exhibit 268, he does not know how he can describe it, but there is a house right there. It is just a cabin, no one in there at all. Now just down there is a mill; there used to be a mill there, where they stayed over night. There was a little ranch there and a rancher lives there, where he has been for twenty years or more, and that is what he refers to as showing any clearings, or ranches, or houses, or any object that might be within the view of the camera. Whereupon, on recross examination, witness testified, that there might be other ranches, other clearings in the valley that could not be seen with the naked eye, if they were hidden by trees.

Whereupon ELMER S. SHANK, called as a witness for defendants, being duly sworn, testified that he is thirty-two years old, and is an attorney and real estate agent, residing at Grants Pass, and has lived there five years, and followed the real estate business all the time, that is, the general business of selling lands, principally in Josephine and Jackson counties. He located at Grants Pass immediately after he finished college, and was in the real estate business partly for the purpose of finding the name of every ranch owner and knowing all pieces of property, all water rights, where the ditches came out, and to secure a personal acquaintance with every resident of the county, that it might help him in prospective future law business. He would think he had negotiated sales during the time he has been in that county amounting to nearly $500,000. He travels about in

his automobiles and otherwise, about an average of 1200 miles a month. He has had occasion only to go over the lands of the company in that county as he was passing to and from lands that might be offered for sale. In the general real estate business, many people having located homesteads, wanted to sell their improvements, and would ask him, as a real estate man, to bring customers to see them, but he does not think that he was ever able to locate any one in the five years, either on a relinquishment or homestead. Most of his customers were those who were able to purchase improved properties, and all of them, upon examining the homesteads, would decide that it would not be a paying proposition to settle on them. The homesteads range from places with perhaps an acre of clearing, run-down orchard, vineyard, or berry patch, with improvements of a log cabin or shack, up to improvements and clearings which had cost as much as $3000—house, barn, well, orchard, and fencing, to which testimony complainant objected as incompetent, immaterial and irrelevant, and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the character of the lands within the limits of this grant, settlements thereon, and public land entries thereof.

Whereupon witness testified that the average value of the improvements on the majority of these homestead claims that came to him for sale, he thinks, would not be over $500 to $700, perhaps $1000, and at the time they were offered to him for sale, these homesteads were almost invariably vacated. Aside from the improvements

referred to by him, these homestead entries had clearings from one acre up to forty acres, with an occasional piece of land that perhaps in 160 acres would have 60 acres that might have been more of the nature of prairie; but he would be incompetent to say whether it was really prairie or not, but it looked as such, that is, grazing land. He would not think that he had noticed over a dozen of these places that had as much as forty acres cleared. They were on what might be termed the first or second benches. First are the river bottoms, and then first and second benches, and then the hillside land. From what he has seen of abstracts, and from his acquaintance with the old settlers there, he thinks most of the present occupied land was taken by pre-emption and homestead—he doesn't know exactly what the law was—Donation Land claims they call them down there, and these were taken between the years 1852 and 1880 largely, he thinks. He thinks the map of definite location of the line of railroad of what is now the Oregon and California Railroad Company for his territory, was made some time during the year 1883. Prior to that time, all the lands not too heavily timbered were taken, and run as agricultural, horticultural, or grazing land. There was a time, about 1890, when the first large planting of orchards occurred in that valley. The bottom and river lands contained most of the orchards. Then there is another class of lands in little coves, protected sub-irrigated spots. He thinks nearly all of these lands fit for orchard use, were taken promiscuously from the even and odd sections, but mostly before the withdrawal of any of the railroad lands. The

Railroad Company got very little of these lands that are suitable for that purpose. From his investigation and knowledge of others at Grants Pass engaged in the timber business, he would say that from eleven and twelve to sixteen per cent of the total unsold lands of the company in Josephine County would be chiefly or solely valuable for timber purposes. From his knowledge of the total area of these unsold lands of the company in Josephine County, he would say that between four and five per cent of them is capable of being put to agricultural uses, but of this four to five per cent there is about three per cent that on account of being heavily timbered, uneven in character, or burnt over land, would not be agricultural until the land was cleared, the expense of which would run from $40 an acre to $75 and $100 per acre. He has had considerable experience in paying for clearing land of that kind. A settler generally tried to get as much cleared ground to start with as possible. That is the drawback against his country. The land costs so much to be cleared, and it is easier to sell at twice its intrinsic value, land that is cleared, above that which is not cleared. There are two general divisions of soil in Josephine County, red soil and granite soil. The unsold railroad land is largely granite land or red land, of rather high elevation, meaning by high elevation from 1600 feet upwards. Geographically speaking, that district is very old. It is of volcanic formation, and thrown in a great deal of confusion. The ranges are not long, but are broken—short, steep hills—and wherever the grade is above twenty per cent, it is very rocky. He would think

that twenty or twenty-five per cent of this unsold land was quite rocky, but as to be totally unfit for cultivation, that it is a question almost impossible for him to answer. Not over two and a half per cent would be available now for practical settlement. They class the unsold railroad land with Government land. Most of their customers are from the Eastern or Central States. The old definition of homestead in these timbered countries is used—that the Government bets the settler 160 acres of land that he will starve to death before he can prove up on it, and the Government usually wins, that is his regular stock description when one wants that land.

Q. In other words, if the land is not valuable for timber, or for mining purpose, or some such purpose of that kind, neither the lands within the even sections nor the lands within the railroad sections, would be available for actual settlement? Is that your answer?

A. No, sir.

Q. That is the way I understand you?

A. Yes, sir.

Q. That is correct, is it?

A. Speculative investment on these unsold lands, both the unsold railroad land and the Government land, is about the total of the market possibility today.

Q. Well, now, what speculative investment would anybody want to make of these lands? What would there be in there that he might speculate about?

A. There is a class of people in the large cities of

the East who think if they can buy any land at $2.50 to $10 an acre, they can sell it at an advance.

Q. That is to say, the class of people that would buy acreage, but would not know whether they could get good land or bad land?

A. They expect to raise nothing on the land but the price, and they think if the price is below a certain point, they can make a profit.

Whereupon witness testified that he does not know very much about the mineral side of Josephine County. As a general popular understanding in his county, they consider it a pocket country. There are pockets, and a host of prospectors continually fitting out, hunting pockets. In the Illinois Valley the "Queen of Bronze" seems to be a good mine, and slightly west from that, running north and south, is a ridge that seems to be of consistently strong formation of copper, the Alameda, in the Galice District, being in this line. There are some reputed good placer gold mines near Leland, and west of Leland, near the Alameda, which is a mine of high percentage ore, quite famous in that part. His general information as to the Columbia mine, is that it is about six miles from Leland, and it is a gold placer mine entirely. Gold mines are usually quartz mines in that county. Copper, he thinks, is almost entirely ore. There are two smelters in that county, one at the Alameda, the Galice District; one at the Queen of Bronze, at Takilma. He believes the Queen of Bronze is outside of the 30-mile limit of this grant, and is forty miles from Grants Pass,

but just where the line directly from the railroad cuts through, in relation to that mine, he is not positive. The other smelter is about twenty-five miles from Grants Pass, and sixteen miles from Merlin, which is nine miles from Grants Pass. The climate where this railroad land is situated, is quite dry in summer time. The country needs irrigation. It is the best climate in the world. Rogue River runs beside or through Grants Pass, which is six miles west of the line dividing Josephine and Jackson counties. The valley there is somewhat narrow. In Jackson County, about twelve miles east of the county line between Josephine and Jackson counties, the valley becomes very broad, and of a prairie nature, extending at right angles to the course of Rogue River and running south up Bear Creek to Ashland, about twenty to twenty-five miles. The Rogue River valley is about eight to twelve miles wide. There is very little level land of the unsold lands of the company in the Rogue River valley between Ashland and Grants Pass. There is a tract of land in the Rogue River valley called The Desert. It is known to almost every person that has ever passed through that country. It is largely unsettled. There is a land scheme on foot which claims to be able to make a part of it productive under irrigation. Without irrigation it is valueless. There is no unsold railroad land in that desert. There may be some on the northeast part of that in Jackson County, but he is not very familiar with the land on the east side of the desert.

Whereupon, on cross examination, witness testified that he has lived in Grants Pass five years, engaged dur-

ing that time in the practice of law and selling real estate, and generally dealing in all kinds of land, all kinds of types and soil, in the general real estate business, selling whatever was listed. He does not know what proportion of these lands handled by him has been fruit land. The largest acreage has not been of fruit land sold, although it can be said that any land sold for any purpose, is still good for some kind of fruit in that valley, but the lands handled by him have not been what are called fruit lands in contradistinction to other lands. The largest total of dollars in transactions has been of fruit lands, but the largest acreage in other lands. In 1908 he made a study for about six months of each particular section of railroad land then unsold in Josephine County, thinking that this might be sold some time in the near future very rapidly, and he wanted to be the best informed of any of the real estate men in that section in regard to the lands. He got the descriptions of the unsold railroad lands from Roseburg, he thinks from Mr. Alley's office, and got a series of blue prints, and from them could tell which sections were unsold, and there are a number that have had settlers on a short time. To get the boundaries of these adjacent to owned lands, the ones that would be first attractive to purchasers, he would get them largely from owners, hunters, timbermen, cruisers. He was not positive within 15,000 acres before today of the accuracy of the area of unsold lands of the company in Josephine County. He thought in that county there were from 160,000 to 175,000 acres of unsold lands. His knowledge of the boundaries of these lands, was gained largely

from others, but the knowledge of the lands was by walking or driving over or around them himself. He would think that he had made a personal inspection of 120 quarter sections, around in that neighborhood, of these lands, included in the grant in Josephine County. He figured from 36 south, 6 west. These quarter sections were from 36 south, 6 west, figuring north to near Glendale, around Wolf Creek, and down to 38—to 40 south and 2 east, along that right of way out 20 miles—about 10 miles east and north of the railroad right of way, and 20 to 40 miles west, wherever they happened to occur. Glendale is thirty-three miles north of Grants Pass, in Douglas County. Grants Pass is in 36 South, 5 West. He has made an examination of these lands about twelve to eighteen miles northeast of Wimer. Most of those lands in there are valuable for timber, and he has looked at them from a timber standpoint, but he has not made a personal inspection of all the odd numbered sections in that township, referring to Township 35 South, Range 4 West. He has not examined over twelve sections, he would think, in that locality. He has examined Sections 31, 35, 27, 25, and 5 and 7, in that township. He believes he has been over every piece in 36-4; most of the north half of 37-5; nearly all of 38-5; everything in 35 south, 6 west, and has been all over 36-6 west, and personally inspected that. He has been in all of 35-7 west, excepting 19 and 31. There may be five sections in township 35, range 7 west, that he has not been in. This is at the upper head of Pickett Creek, and he has not been north of that. He has been in

everything in the east four tiers of sections in 36 South, 7 West, and in 37 South, Range 7 West, except two or three sections in the southeast part, and probably all in Township 37 South, Range 8 West, excepting sections 5 and 7. Of these lands mentioned, he would not think that over five per cent would be agricultural land, or could be rendered so by clearing where there is any growth that would need to be cleared. There are 20 to 40 acre patches of good agricultural land yet unsold of these railroad lands; but, for instance, in 36 South, 4 West, in Josephine County, nearly the entire amount of land is rock. It is not good for anything, never will be unless the climate changes and the rock decomposes. He would think that on Evans Creek seven to ten per cent of that land in Township 36 South of Range 5 West, would be available for agricultural purposes, but it is a poor class of soil. It has much granite in it. He did not in his direct testimony estimate that eighty-five per cent of these unsold lands were not good for timber, but that fifteen per cent had good timber, and that four per cent was agricultural land. The homesteads that he had for sale were largely relinquishments that had been brought to him to put on the market, but he never sold one. He made a business of dealing in homestead relinquishments as a competitor in the business; he had them offered, but never succeeded in selling one. He usually spoke against them because in showing two dozen in five years no one ever bought. He always had something else that attracted more than that. Some of these homesteads had valuable improvements on them as much as $3000. He had

one particular homestead in mind for sale with $3000 improvements on it. It was in 36-6, or 37-6. He would not say that the greater portion of Josephine County is waste land. The two largest valleys in Josephine County are the Illinois Valley and the Rogue River Valley. The Illinois Valley was settled about 1852, and twenty years ago, from what he could see of the buildings and improvements and the old orchards, that valley was far ahead of where it is now (1912) in total valuation. The price of property generally, has increased in that valley during the last fifteen or twenty years, as a general proposition, a very large ratio of increase, but the Illinois Valley was intrinsically worth more fifteen or twenty years ago than it is now. The ranches and farms situated in Josephine County are generally irrigated. He believes there are a few successful ranchers in Josephine County, who have no irrigated lands. Fruit propositions are about the only successful non-irrigated propositions. Josephine County is more profitable for agricultural pursuits with irrigation. The conditions are extremely varied. Nearly all land will be benefited by irrigation; some land must have it; a few spots are sufficiently sub-irrigated for fruit, and some bottom soil, with years of the rainfall of 1912, irrigation would be unnecessary. He would not say that you could not successfully operate a ranch without irrigation in Josephine County—that would be stating it too broad, because those who come there, the Easterners, think they can make more money by paying higher prices for the irrigated land. Therefore, the unirrigated lands are not

sufficiently tried out. The cultivation of the non-irrigated lands is not on a broad scale, by a class of people who farm it as well as it should be. As a general proposition, farming in Josephine County is not really successful without irrigation, except bottom lands. His knowledge of mineral lands is rather inferior. His personal experience in mining operations in Josephine County is from personal examination with prospective settlers in the valley, visiting mines or so-called mines, but he never panned a half-dozen pannings in his life, but can detect whether there is gold there very quickly, and knows the character of dirt which pays. In visiting these mines, specimen pannings have been made to show investors what the value per pan would be. He has gained as thorough a knowledge of mining, geologically speaking, in perhaps an aggregate presence, with expert miners, of thirty days in his five years there—whatever that amounts to. He has made a study of mining in so far as it affects Southern Oregon and Northern California, but is not a practical miner. He is a geologist. His knowledge was gained from personal inspection with men who have knowledge of the leading mines and prospects of the community. He has inspected Granite Hill with Mr. Morphy; Swastika with Mr. Howland; Queen of Bronze; the Michigan mine; Logan mine; Wimer mine; the mines on the Three Pines Timber Company land; Greenback. He would go to these mines with the manager and would have an automobile of four to eight people—one or two automobiles of people—to look over the country—capitalists from the East. They would

follow the manager or foreman of the mines and learn all that they could therefrom. As a geologist, he tried to use his brains. He did not feel qualified to locate a person upon a mine, but could pass upon the mineral qualities of the land.

Whereupon R. L. BOOTH, called as a witness on behalf of defendants, being first duly sworn, testified that he is sixty-eight years old; by occupation, stock-raiser and farmer, and resides about seven miles north of Willamina, in the southwest part of Yamhill County, and has lived there since 1869. He lives in section 1, township 5 south, range 7 west, and is pretty well acquainted within an area of six miles each way from where he lives, but he does not know much about the land in Tillamook County, and is not acquainted west of McMinnville. His knowledge extends to the even as well as the odd sections within that six mile area. The township of railroad land east of him there is principally timber, saw timber, good timber, and he would say that that is the chief value of that land. The other railroad land there has dead fir timber on it, burned down many years ago. The snow-fall in the high part of it is six feet in the winter. The burned over land is red shot land. This burned over area was at one time covered with heavy timber. There have been saw mills there. There has been scattered timber on the creek west and northwest; it is all dead, that is, practically speaking—just a few trees left. The burned over land is good enough soil. The timber is of no value at all. The stumps are still there pretty thick. It was good timber, some of it—

very nice timber—large fir timber. The roots of these trees are still in the ground and sound. It would probably cost to clear timber land of that character from $100 to $125 an acre, and it could be cleared. It would cost that per acre to clear it, the best a man could do. The low lands, where the hills are not so high, would be pretty good fruit land. On the ridges, where the ridge switches off, the land is pretty steep. He thinks that there would be about twenty-five per cent of this land that could be cultivated if it were cleared, and this is true of the even sections in that same territory. He was County Commissioner eight and a half years. He would not want to farm this land on the higher points, which is covered with five or six feet of snow. Crops would be late starting in the spring, and the weather would be cold early in the fall, and he does not think it would be practical to use for agricultural purposes. It might do for grazing—something of that kind, but not general farming. He is an old pioneer of his county, and is a cousin of Senator Robert A. Booth, but has no business relations with him, and has not seen him since he went out to the saw mills.

Whereupon, on cross examination, witness testified that his home in Section 1 was taken up as a Donation Land claim before the line of definite location of the railroad grant was filed. He bought his land, and it had been under cultivation prior to 1869, when he went there. He knows the country at large but not the definite sections. He has followed stock business principally. He is not engaged in active farming now, but

has been. He has been in the county business, but has not done much since. Stock business is what he has followed principally—raising cattle and hay, and that is what he does. In his community they use the land a good deal for cattle range. If this unsold railroad land in that locality was cleared off, it could be used for grazing purposes, but would require labor to clear the lands off. He has been through the Tillamook country to the coast, through the Salmon and Trask. Next to the coast there are dairy ranches—clearing the land off and raising grain on it, but they are not doing that in his vicinity. After one gets over the ridge in Tillamook, there are lots of that kind. That shot soil on these ridges produces fair when cleared off, that is where it is not on the high land, but on the ordinary ridges where it is not so high. The land spoken of covered with snow, is only covered with snow in the winter time, and would produce grass all right. The altitude of that land is about 700 feet—the ridges way below that. He does not know how high that would be, not the main ridges. The surveyors told him that these ridges were about 700 feet high. The community is pretty well settled south of him, down below, the valley part is all thickly settled, and he has a number of neighbors in his immediate vicinity; his nearest neighbor is about half a mile away. That is an old settled community. The valley has been settled quite awhile—been taken up by Donation claims. Yamhill County at large is a fruit country, and some of this land referred to by him would be good fruit land, meaning these hillsides. He could not say anything

about grape culture, because he does not know, because it has never been tried there. He could not say whether grapes would do well or not. They raise English walnuts in Yamhill County, but not in that part. They raise them out more towards Amity, in the red hills. He could not say whether walnuts would do well or not on these lands; they have not tried to raise them, and he could not say anything about it.

Whereupon, on re-direct examination, witness testified that he lives on the Al Gates Donation Land Claim, and the Charles Fendall Donation Land Claim is right down the valley south of him, about five miles from where he lives. All of the agricultural land, practically, on Willamina Creek was taken up under the Donation law or Homestead law.

Whereupon H. W. SCOTT, called as a witness on behalf of defendants, being duly sworn, testified that he resides at Forest Grove, Oregon, and is engaged in real estate and farming and has done more or less cruising of timber lands for the last twenty years, spending considerable time at that work, but could not say exactly how much. He has cruised lands in Washington, Yamhill, Columbia, Clatsop, some in Douglas and a little in Coos County. He has lived in Washington County about twenty-two years and in Yamhill County about ten years but never resided in Tillamook County. He is familiar with the timber lands in Tillamook County in a general way and with the timber lands in Clatsop and Columbia Counties. He knows that these unsold lands

in Washington County were obtained under two grants which overlap each other in that County. He is familiar with the lands say from 1 south 4 west, on west. He has been over the country in a general way, east of there, but never paid any particular attention to that. In a general way he is familiar with the lands in township 1 south, ranges 4, 5, 6, 7 and 8 west included in this grant; also township 2 south, ranges 5, 6, 7 and 8 west; township 3 south, 5, 6, 7, and 8 west; township 4, 6 and a little in 5 west; in 4 south, 7 west; 5 south, 6 and 7 west; 6 south, 6 and 7 west; 7 south, 6 and 7 west; 8 south, 6, 7 and 8 west; 9 south, 6, 7 and 8 west. He is not very well acquainted, only in a general way, with the lands of the Company north of the Base Line and west of the Willamette Meridian in townships 2 and 3, ranges 2 and 3 west. He never did any cruising in that part of the country but has been through the country there. Township 2 south, range 2 west is in Columbia County and part in Washington County. In the east, along next to the Willamette River, he never did any cruising but has been through it, all through all of that country there and has been through township 3 range 2 north of the base line and west of Willamette Meridian, where the green marks are on the map, referring to "Defendants' Exhibit 259" and has also been through township 3 north, range 3 west; township 1, range 5 west; township 1 south, range 6 west; township 3 south, range 1 west; township 1 south, range 2 west; township 2 south, range 2 west; township 1 south, range 3 west; township 2 south, range 3 west; township 1 south, range 4 west;

township 1 south, range 5 west. Some of these lands involved in this suit are in Tillamook County and he is familiar with these lands. He is familiar in a general way with the timber lands in Columbia County belonging to the Company but has not cruised that part and has cruised in Tillamook County in 1 south, 6 and 7 west; 2 south, 6, 7 and 8 west; 1 south, 1 and 2 west; 3 south, 8 west. More particularly than in other parts of Tillamook County, and has cruised in townships 2, 3 and 4 south, range 8 west; townships 3 and 4 south, range 7 west. He has cruised and is familiar with lands of the Company in Washington County south and from 1 to 4 west, but not east of that and has sold considerable lands of different kinds and different descriptions, and he generally goes through and looks it over; sometimes he looks it over in a general way and sometimes for people who wanted to know the amount of timber there was on it. In cruising a piece of timber land, one finds a section corner, or as near as possible, of the land, and paces the distance off to the land to be looked at or measured the distance with a tape line or chain, sometimes both, but ordinarily the distance is paced. There are several ways of doing the work. He begins at a corner of a forty, called single lining it, and paces off half way through that forty, if it is wanted to cruise 160 acres of land he paces off 250 paces and then runs through the center of that forty to the center of the forty, if going north then west through the balance of that forty to the center of the next forty, then south through the center of the forty and south to the section line where he started to check up and see how

he came out. If they are "double running" it the process is reversed and the work is done east and west. They get the amount of timber there is on the land, the general topography of the country, the way the streams slope and all kind of data in regard to the land, timber, soil and one thing and another. In making this cruise or search he would ascertin the character of the land as to soil and as to its being capable of settlement and as to its best possibilities. The character of the unsold land of the Company involved in this suit situated in Washington County is generally rough and broken, heavily timbered in a great many cases and a great deal of the land is rocky and not fit for cultivation on that account. It is unfit for cultivation on account of being too rough, steep and broken. In a great many cases there is quite a high altitude, snow getting very deep in the winter. The soil is generally all coarse mountain land and very unproductive. In order to clear this land for cultivation it would require ordinarily from $100 to $200 an acre to put it in cultivation, to which testimony complainant objected as incompetent, immaterial and irrelevant, and it was agreed between the parties that this same objection should be considered taken as to all testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof.

Whereupon witness testified that not over twenty per cent of these lands in the aggregate could be used in any way for agricultural purposes, even after the timber was cleared off, and he would not consider, in his

judgment, that any of it would be available for any agricultural purposes without the removal of the timber. There might be an isolated case where somebody has gone on to a piece of land, cleared up a few acres and abandoned it. There are a few cases like that where they started out on it and could not make a living on it, referring to both the even and odd sections. He saw a great many places in the last two or three years where there were notices tacked up on trees notifying people that they had settled and located on a certain piece of railroad land and every case that he ever saw where these notices were, was always where there was good timber. He never saw notices posted up on the burned places. From his observation within the limits of this grant, the so-called "actual settler" notices were posted on heavily timbered land, chiefly and only valuable for timber. He would say that probably one-fourth or one-fifth of the railroad lands in Washington County had been burned over. Formerly this area was heavily timbered and it now has left burnt trees and logs there. The large part of that land would not be fit for anything that he knows of and it would cost to clear from $100 to $200 an acre. It would not be any more suitable for settlement than any of the rest of it and there would not be more than twenty per cent of it that would be fit for cultivation. The soil is coarse mountain soil, coarse shot and clay and often rocky. The largest part of this land is of a high elevation, some running to about 3,000 feet elevation, and snow gets in there six and seven feet deep lots of winters and lays on sometimes for a big part of

the winter, some parts of it all winter, three or four months at a time. There are a great many homesteaders on the even sections within the limits of this grant in the Counties of Washington, Tillamook and Yamhill, who have abandoned their claims before they proved up and others took them up. A great many of these homesteaders who have proved up on the lands have abandoned them afterwards. They could not make a living on them. These homestead claims that have been proved up have been bought up generally by timber companies. He remembers one place on the South Trask on the bottom where it was settled up and houses were there, were settled twenty-five years ago and ten or fifteen years ago they were all abandoned, the houses going to rack and some of them had quite little clearings in there. They sold these lands. Some of these homestead entries within the limits of this grant with which he is familiar were abandoned before final proof, they were finally retaken. A great many of them were taken under the timber and stone act and proved up under that act. The lands within the limits of these grants in Tillamook County is very rough and mountainous, steep and broken and rocky in a great many places, heavily timbered and chiefly valuable for its timber, the only value that he considers the land has now. It would cost to clear any of these lands that might have the soil that could be utilized for agricultural purposes $100 to $200 per acre. He has had a great deal of experience of this kind of clearing up. Three years ago he cleared up some heavy timber land of his own. He blew the stumps out with powder and it

cost him all the way, for powder alone, from $40 to $80 an acre. After that he had the holes to fill up, the logs to burn up, the blasted stumps to clean up and he don't know exactly, because he did a great deal of work himself and the boys, and he never kept any exact account of the labor, but kept an account of the powder because he was trying to find out whether it was profitable to use powder or clear the land without powder. It costs in those cases ordinarily $150 an acre. That was about what he estimated it did. This land of his was situated in township 1 south, 4 and 5 west but had been originally homesteaded, but he had bought it. He owns 430 acres in one body about seven miles from Forest Grove on Scoggins Creek. Part of it is on high lands and part on low lands. He has cleared of this land about 40 or 50 acres from time to time extending over a number of years, some one time and some another. Part of this homestead owned by him was agricultural when it was first entered. He has been on this land twenty-five years and probably twenty per cent of it was really available for settlement in its original state. He has cleared at the heavy cost mentioned by him in the last few years by using powder, probably about 10 or 12 acres. He does not think there is any more economical method known to the people here by which this heavily timbered land can be cleared and made susceptible to cultivation. That is the cheapest way that he had ever tried. He does not believe that there is ten per cent of the unsold lands of the Company in Tillamook County within the limits of these grants that would be available for agricultural purposes,

and there is none of it that would be suitable for agricultural purposes without the timber being removed. The soil of these lands is a coarse clay and shot soil. The unsold lands of the Company in Yamhill County with which he is familiar is the same as in Washington County and chiefly valuable for the timber. There would be about fifteen to twenty per cent of the total unsold lands of the Company in Yamhill County that would be available for agricultural purposes, including such lands as might be available if the timber was removed. There would not be any portion of these lands in Yamhill County with which he is acquainted that would be available or useful for agricultural purposes without some clearing or something like that, that would not pay for the cost of cultivating it. The soil of these lands in Yamhill County is coarse clay and shot soil and rocky, a great deal of it is very rocky. These unsold lands in Washington, Yamhill and Tillamook Counties are all in the Coast Range excepting these lands east of Forest Grove in 1, 2 and 3 west, which would be in the foothills and hills of the Willamette Valley. Beginning at 1 south, 4 west, from there on is all in the Coast Range of mountains. The lands in Columbia County through which he passed, with which he is acquainted are generally heavily timbered. He would not say there was over fifteen or twenty per cent of these lands that would be available for any agricultural purpose with the timber removed and without the timber removed there would not be any.

Whereupon witness testified as follows :

Q. Well, isn't it true, Mr. Scott, that here and there throughout this grant, in the low little valleys and ravines and draws leading down to the larger streams, there is here and there a spot where a house could be built, that is level, with a half-acre in a place, that you could get a garden, plant a few potatoes, sow a few oats, and make a pretense of a home, and settle on this land?

A. Yes, sir.

Q. Well, what would the balance of the settlement be good for?

A. It wouldn't be good for anything. A man would starve to death on a settlement like that.

Q. Well, where these quarters were timbered, and a man could find half an acre where he could build his cabin or his house, put out a garden of a half-acre in potatoes and things of that kind, couldn't he make a living by getting the timber?

A. Yes, if he could sell the timber for the price it is worth nowadays, he probably could live off the sale of the timber. He certainly wouldn't live off what he would produce from the soil anyway.

Q. Then such claims on such tracts, if I understand you, would be chiefly valuable for the timber?

A. Yes, sir. There is another thing now I think of it. Take those bottoms you speak of along the rivers, out in this Coast Range of mountains, a great deal of that is the poorest land there is out there.

Q. How does that happen?

A. It is beds of gravel; the formation is steep, and the rivers and streams are very rapid, and the alluvial loam has washed away. You can see that upon the Willamette and Columbia rivers here—it has washed away, and lodged down on the low ground and flats.

Q. Then, as I understand you, within the limits of these railroad lands, the level bottoms are very small?

A. Yes, sir, just little places along the canyons.

Whereupon on cross-examination witness testified that he has not lived on his ranch for twenty-five years but has lived in Washington County that long and has been in that county all the time excepting three years when he was in California. He has lived on his ranch and in the town of Forest Grove, moving to Forest Grove five years ago and living there ever since, but he farms his place, going back and forth almost every day when not doing something else. He has cruised for a great many people or for his own purpose for the purpose of selling timber and has cruised for the Hammond Lumber Company and Louis Blaumauer who is now dead. Blumauer owned some timber land, some 1600 acres out there. Witness cruised for a great many people who did not even own timber, who wanted him to look at a piece of timber they wanted to buy, and cruised for lots of others he could not name. He was employed by the Oregon and California Railroad Company about twenty-two or twenty-three years ago when it started in to examine its land, could not tell the man

with whom he cruised the timber and who took him through these lands in Washington County and showed him in a general way the section corners or lines and trails and packed some for him. This was in Washington County south of the base line and in Yamhill and Tillamook Counties. He has never been employed by the Company in any other capacity since that time. He never cruised any lands in 2 and 3 north in ranges 2 and 3 west, but went through and looked over that in a general way. His object in going through it was to see what the timber and country were like and how much Government land there was, that was good timber and all that kind of thing. At different times he went to look at pieces of land for other parties, people who wanted to sell out or something of that kind and he would go and look at it. In some cases he ran section lines of the Company's lands in this locality. In running a section line there would be a railroad section on one side and Government land on the other, and his knowledge of these lands is of a very general character. He only made an examination of the Railroad Company's lands in Washington and Tillamook Counties in township 1 south, ranges 4, 5, 6, 7 and 8 west when running the section lines out looking at the Government land and would also see a great deal of the railroad land, quite a lot of that he would have to run through and look the lands over. In fact he looked over quite a lot of that for the A. B. Hammond people and made a personal inspection of a great deal of that land. He inspected a lot of that country before it was surveyed and located a great many

people on the lands there before it was surveyed and built cabins and a big part of those trails through there he built and helped to build. At the time they first went in there they supposed that the Government would get all the land and in there on the unsurveyed part and so they looked over that just the same as they did the Government part of the land. He first started into that country twenty-five years ago and a little farther south of there he was in thirty-five years ago. He has been along in that Coast Range in that country, cruised timber and land, hunted and prospected that country more or less in the last thirty-five years, outside of the three years he was in California. This railroad land has been withdrawn from entry ever since he has been in that country. He had a good many other occasions besides that referred to for the Hammond Company, to make special inspection of the Railroad Company's lands. He bought some of the Railroad Company's lands himself situated in township 1 south, range 5 west near his ranch. None of his ranch was obtained from the railroad land, but all from the Government, part of it was in odd sections but was taken before the railroad came through. He has been engaged in locating people on homesteads in that section of the country and has located people on the even numbered sections within the limits of this land grant, and he has filed and perfected a homestead entry on the northeast quarter of section 22, township 1 south, range 5 west, right north of Sheridan, it was 5 south and 6 west he believes, but does not know if he can tell the section without looking it up. There are a great many

times that he looked at these lands with reference to the soil and all the conditions connected with the lands, logging and soil and streams, climate and all that kind of thing, but his principal knowledge concerning these lands was obtained while he was cruising the timber. He could not find out anything about the land without he was out in there. There was no other way that he knew of. He lived seven years on his homestead in 1 south, 5 west in section 22 and two different winters they were there the snow was five feet deep in his yard, so he knows pretty well about that. He used to go out and shovel snow off of some of the cabins out there, where the people were not there, six and seven feet deep and had a pretty good way of knowing about what that was. Portions of this land of the Railroad Company is very heavily timbered and has a good market value, good quality of timber. The money a person would receive for his timber would help some in paying for the clearing of the land. The value of the timber would not largely pay for the cost of clearing the land. He has 160 acres of timber land himself in 2 south, 5 west and the best offer he ever had for it was $3500 and he does not think one could clear that land for $200 an acre. He would not take the contract to do it at any less than that. Clearing land in these mountains is a little different from what it is down in the valley where a man can get at everything and where everything is accessible, good roads and railroads. One has to transport all his powder and material and build a wagon road in there. It would cost $10,000 to build a road to it.

Whereupon on re-direct examination witness testified that he filed on his homestead on the northeast quarter of section 22, township 1 south, range 5 west, twenty-five years ago last spring. The land is steep and broken and rough and chiefly valuable for its timber. He lived on it seven years and stayed there two years after making final proof. He did not make it his home because he could not make a living on it and if he had not been cruising timber and one thing and another like that, he would have starved to death on it. He first took it up as a pre-emption and when the time was drawing near for proving up, paying $400.00 the Secretary of the Interior allowed him to take that as a homestead, to relinquish his pre-emption filing and take it as a homestead, although he had had a homestead once before, he allowed him to perfect title to it, which he did and that was his salvation. He was no nearer having the $400.00 when near the end of that time, when the 33 months was almost up than he was when he went there. He used to go and work out, grub stumps for the neighbors there for a dollar a day, as good a wage as he got at that time, and buy bacon and flour and take it back to his family. At the end of the week when he came home they had everything eaten up he took there the week before and he could not say that he was getting any farther ahead. When this timber excitement came up, people came in taking up timber, he knew all the country, all about it, all the lands, etc. Then he started in on that and his place was a kind of stopping place and they stayed there as long as that went on. That was all he made out of

that. When he went there timber had no market value. He went and homesteaded because he did not know any better. He wanted a piece of land and had to have it. These homestead settlers in that general vicinity all abandoned their claims practically every one of them and the lands were re-entered and taken up under the timber and stone act. He located people on both. Most of them were at first homesteaders and then when they saw they could not live on the land and comply with the law they either abandoned them or relinquished to other people and they took them up under the timber and stone act. These lands were finally nearly all bought up by different timber companies. The timber is all they were any good for. He bought some railroad land from the Company somewhere about eight or nine years ago in the same vicinity, he thinks about 300 acres altogether first and last. Some of these lands he sold under his contract with the Railroad Company but it was all paid out. He assigned his contract to others. The land was chiefly timber. He does not own any of it now. Different parties own it. One man by the name of Longren owns part and another man in Spokane, Munson, owns a piece of it and it is owned by people who are holding it for the timber values. His knowledge of these lands that he did not specifically cruise is sufficient to enable him to tell the character of the land as to soil and timber and other possibilities. He can tell exactly what the condition is just as he has, and knows absolutely what he is talking about.

Whereupon on re-cross examination witness testified

as follows:

Q. You never have made an examination of these railroad lands?

A. Quite a good many of them I have.

Q. Wait till I finish the question, Mr. Scott.

A. Yes.

Q. For the purpose of determining whether 160 acres of land could be obtained in contiguous bodies, not by legal subdivision, that would furnish a sufficient amount of agricultural or tillable land for a man to make a living on? I don't mean that he could make money on, but that he could make a living on, supply himself and family with the necessities of life?

A. Yes, sir, I did. I looked for my own personal benefit, for I wanted a piece of land just like that. I went onto the Nestucca country 34 years ago this summer, and went down there and looked at a piece of a section of railroad land at that time, for that purpose, and looked it all over, and looked that country thoroughly to see if I could find a piece of bottom land, or something of that kind, that was suitable for making a home; and I spent a good deal of time in there at that time. I lived then north of Sheridan.

Q. You don't mean to testify, however, Mr. Scott, that you have made such an examination as I have described in my question previously asked you, with reference to all of these lands that you have testified concerning, some of which you have testified that you never

cruised, that you merely had passed through and made some casual examination of?

A. Well, now, I will answer you in this way: I have went all over that land, and all through all that country, and looked for just those things, just exactly like what you are talking about now; and I remember the nearest of anything that I found of that kind was a piece of land in Section 5, Township 2 South and 5 West; and I think a woman here of the name of Mrs. Badgley, right here in town, owns the piece of land now; and that was in a railroad section, and was supposed to be railroad land. Now, I will show you how thoroughly I looked out and hunted it up; and from the fact that nobody seemed to take it up, and the railroad people would not offer to sell it, I went farther, and had an attorney to look it up, and looked the thing up and found that this land had been filed on prior to the time of the railroad grant, and had been abandoned. And I got that—got a party to take that as a homestead. Now, that lay in a "T" shape there, and there was a kind of a swale. There is some of this what we call alder flat land, and it was the best piece of agricultural land that I knew of. It was just kind of a little strip—little spring branches run down, this kind of black alder land; and they took that then as a homestead.

Q. That was on an even section?

A. That was on an odd numbered section. Section 5, 2 South, 5 West. It had been picked out—I forget now—sometime about '62 or '63. That is the best of my

recollection. I think this railroad grant was about 1865, wasn't it?

Mr. Fenton: One was 1866 and the other was 1870.

A. Well, it was prior to that time anyhow; and this former entryman had picked this out as being the best piece of land that he probably could find in there, and I done the same thing. I was looking for something of that kind.

Q. You don't remember the description of that land, do you?

A. Yes, sir, I do.

Q. What is that?

A. It was the north—it was "T" shaped, now—I might make a mistake in it; it is section 5.

Q. What township and range?

A. 2 South, 5 West, section 5. It is right at the quarter post anyhow. I think it was the north half of the northeast quarter and the southwest of the northeast quarter, and it might possibly have been the Northwest of the Northeast and the Northeast of the Northwest, and then a row of forties run south of that. That is the way that stream ran in there. I wouldn't be just positive now, off hand.

Whereupon GEORGE W. JONES, called as a witness on behalf of defendants, being first duly sworn, testified, that he resides at McMinnville, Yamhill County, Oregon, is at present County Clerk, and has resided

in that county for forty-seven years. He will have been County Clerk, at the close of this term, eight and a half years, before that he was in the lumber and sash and door business. His first sawmill was on Panther Creek, in Yamhill County. In 1876 he purchased 320 acres of land of the Oregon and California Railroad Company in Section 9, Township 3 South, Range 6 West, and operated there ten years, and removed to Section 3, Township 3 South, Range 6 West, and operated there fourteen years. The first mill on Panther Creek was about eight miles and the other two about seventeen miles from McMinnville. His first purchase, including the railroad and non-railroad land was 320 acres. After that he purchased the north half of the Northeast quarter of Section 3, Township 3 South, Range 6 West, that is, after he moved the mill. He made his first purchase from private individuals on Panther Creek. He is conversant only with the lands of the company located in Townships 2 and 3 South, Range 6 West, and probably one tier of sections in the west of Township 2 South, Range 5 West, and Township 2 South, Range 6 West. While he has been on and hunted over some of the lands in 4 South, 6 West, he is not so conversant with them and would not wish to testify as to anything but what he absolutely knows. He has ranged these mountains a great deal, but is only conversant with these two townships, and wishes his testimony to be confined principally to them. The general character of those lands, referring to the country, is very abrupt, cut into deep ravines and gullies. He supposes the highest elevation would be

about 2,000 feet. His first mill was located at 1,200 feet above sea level; his second one not so high. The general character of these lands with the exceptions of now and then an isolated swale or tract that he has knowledge of, is not agricultural, is wholly fit only for the timber. For the time that he ran his mill, for twenty-four years, he didn't even raise vegetables, it was cheaper to buy and haul them in than to raise them. He does not think that five per cent of these lands, with which he is acquainted, could be used for agricultural purposes. To all of which testimony complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be deemed taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof. Whereupon, witness testified, that only those few tracts that he speaks of, that had been taken years ago, in a state of nature could be used for agricultural purposes. He cites one taken by Mr. Carr in Section 12, Township 3 South, Range 6 West; he refers to lands heretofore sold and taken; of what is remaining, he does not know of any that could be used for agricultural purposes. The land is what is termed "shot land." It is a kind of rocky formation. In fact the rocks are almost to the surface of the ground. There is very little soil. After the timber is removed some grasses grow there; it could be used for stock raising, but the principal growth is what is called salal and Oregon grape—not very much value. Nothing will grow where the grapes

and salal are, but where there is no salal and grape, after the timber is removed there is a species of grass that will grow there that will furnish very good summer grazing; but owing to the deep snows in winter, a man would be compelled to have some place to take his cattle. He could not maintain them in that range. He has no knowledge of the cost of clearing this heavily timbered land, but knows that it would cost enormously. There are several kinds of trees in that section. In Township 2 South, 6 West, the principal growth is yellow fir, with a considerable amount of hemlock, and what is termed here by the people "larch." He knows of the burned area within the limits of this grant, west of McMinnville, what is called "the Meadows." Those tracts of land that were taken along above Meadow Lake, on what is called Walker Creek were taken years ago principally for the dead cedar timber, that was burned, that could be worked up into shingles, posts, etc., and shipped out. There was one or two beaver dams in there, but he has never known them to cultivate them at all. The soil of this burned area, he considered unfit for agricultural purposes, except where it was in a swale, an ash swale or something of that kind, where it is beaver dam, or something of that kind, where it has deposits. That would be a small, not a large area. Some of these even sections within the limits of this grant, these railroad lands, most of them he knows of, have been abandoned since they removed the cedar timber. Some of them have been sold. One does not find many of that class where the timber is not removed, except on Walker

Creek, in Section 12—3 South, 6 West, taken by Mr. Carr. He sold to some other party. There are very few of these settlers left on the lands in the even sections; after removing the cedar timber and taking from them what they could to make a living, they have abandoned them, or disposed of them. There is a very small amount of that class of land in these two townships. In going over the head waters of the Trask in his fishing and hunting trips, within the limits of this grant, as far as he saw, he considered both the even and odd sections about the same nature as those of Townships 2 and 3 South, Range 6 West, except they are more precipitous and more rugged. The timber was all he could see any value for. The mountains lying along where the elevation is in some instances 2,000 feet above sea level, and are called the Coast Range. They are very nearly parallel with the Pacific Ocean. It is a continuous mountain range from the Columbia River to the California State line, and thence on down. Whereupon, on cross examination, witness testified, that he has been engaged in the milling business and in the manufacture of products of timber since his residence in Oregon, and his acquaintance with land has been as a timber man. He owned no lands in 2 South, 6 West, but his lands adjoined. He has been in 3 South, 6 West, and has been through a great portion of 2 South, 6 West; has hunted and fished over most of it. Has a general knowledge of, but never cruished the timber, or ran the lines of these townships, and has a general knowledge from traveling through the country, hunting and fishing. He located a timber claim

in 2 South, 6 West, but never perfected his title to it; he let it go, but he wishes he had. He has purchased from the Railroad Company, in all, 600 acres. The first purchase he made was in 1876 and he paid $1.25 an acre for the first 400 acres. The second purchase he paid $3.00 an acre. He afterwards paid $5.00 an acre for the north half of the northeast quarter of Section 3, Township 2 South, Range 6 West. This Meadow Burn that he speaks of—he does not know, but he supposes they were burned—there is no evidence of very much timber ever have been on it. It is a meadow three quarters of a mile long and averaging an eighth of a mile wide, now covered by a lake that is located in Sections 8 and 16, Township 3 South, Range 6 West, a half mile west from his mill, right down to the lake. He is not now engaged in the lumber industry. He never attempted to raise anything on any of his lands, and never attempted to clear them, or produce any products from the soil.

Whereupon J. D. ZURCHER, called as a witness on behalf of defendants being duly sworn testified that he is thirty-three years old, an abstractor and engaged in buying and selling timber lands. He resides at Roseburg, Oregon, and has resided there five years. During that time he has been engaged in the business of abstracting and buying and selling timber lands. The name of his Company is the Commercial Abstract Company. "Defendants' Exhibit 312" was prepared from abstract records in his office and correctly represents the ownership of land as shown by the deed records of Douglas

County. The abstract records in his office are built up from records in the Court House of Douglas County, that is from the records in the office of the Recorder of Conveyances. His records are also based on the Land Office records. What the deed records do not show they search the Land Office Records for additional information and he is able to say that he has verified the sources of information with the official records and traced the same or reproduced the same upon this map.

Whereupon Defendants offered this exhibit in evidence marked "Defendants' Exhibit 312" to which complainant objected as incompetent, irrelevant and immaterial and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof.

Whereupon said exhibit was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidenc and identified herein as "Defendants' Exhibit 312."

Whereupon witness testified that "Defendants' Exhibit 312" is a map of Douglas and Coos Counties as prepared from the plats on file in the United States Land Office and on that he has painted the lands owned by the Oregon and California Railroad Company, C. A. Smith Timber Company, the Neenah-Oregon Land Company, the Roach Timber Company, Kendall Brothers, Pillsbury Lumber Company, Lennan Land Com-

pany, the Bradford-Culver Timber Company, the Myrtle Lumber Company, the Gardiner Mill Company, Weyerhaeuser Land Company, A. H. Hinkson, and Sparrow, Coach & Kroll, in different colors. This legend on the left hand side of the map shows these respective land holdings and the colors are shown in a small square. The light or pale green colors represent the unsold lands of the Oregon and California Railroad Company in Douglas County. There are none of these lands shown in Coos County. The dividing line between Douglass and Coos Counties is the dotted line through the map and his records do not show any of the unsold lands of the Company in Coos County and so far as the map shows the timber lands of these other people and the unsold lands of the Company it is confined to Douglas County alone with the exception of one or two places where the line crosses over which would make it lay in Lane County and in Josephine County and Jackson County, just on the border. He has been over practically all of Douglas County through the mountains and they have in their office cruises of timber of practically all of Douglas County and he has ascertained by personal inspection the timber character of these lands. They buy and sell timber lands, and it is necessary for them to inspect a great deal of this timber in buying it and he has done that personally. He has traveled over and through this grant, the unsold portion of it, and is acquainted with what is called merchantable timber. He does not know or cannot say as a cruiser how timber cruisings are made nor has he ever made any cruisings as

a timber cruiser. He knows how that work is done from his knowledge of how timber is cruised. It depends upon what kind of a cruise one wants to make. They will go through and measure a tree, the heighth of it and count the number of trees to the acre. It is estimated as a rule that way. Of course a man may go out and walk through the timber and guess at it and make a cruise that way, but they measure the heighth of the trees. There are several different methods by which one can measure the heighth of a tree. A man becomes familiar after years of practice of estimating the heighth of a tree. One does not take a tape line.

Whereupon witness testified.

Q. Now, assuming that this timber on certain parts of it stands upon soil that, when the timber was removed, it might have some agricultural value, or some value for grasses or fruit or grazing purposes, or other agricultural or horticultural uses, about what per cent could be made available for such argicultural or horticultural purposes when the timber was removed, in your judgment?

A. Oh, I should suppose it would average 15 or 20 per cent.

Whereupon witness testified that he could not say exactly what it would cost to remove this timber and clear the stumps and roots and make it available for use in agricultural pursuits, but should estimate that it would run all the way from $100 to $300 or $400 an acre to cut that timber off and clear it.

Whereupon witness testified.

Q. What is the character of the soil of this land that you would speak of as being cleared, or subject to clearing, this fifteen to twenty per cent that might be made available for some agricultural purposes? What would be the character of that soil in the majority of the grant?

A. Well, that is generally first-bench land, and the soil is fairly good, because it is on the best soil where the best timber grows.

Whereupon witness testified that the land that was first settled in Douglas County was upon the Creek bottoms, open land. The best soil in the county at that time was taken up under the Donation law and these lands were in the valleys. Drain is on the main line and there is a surveyed projected road on Elk Creek. There was some land originally granted to the Railroad Company along the line of the railroad between Elk Creek and Roseburg but practically all of that land has been sold by the company to settlers, that is, such of it as the company ever obtained title to. This road was not built until about 1878 and the country was settled up in 1850 or thereabouts and as a result most of this land was acquired under the Donation and homestead laws and cash entries. The unsold land in the vacant places shown on this map outside of the solid blocks, or the checker board lands, are nearly all barren, rocky points, and have not very much value of any kind. A settler might make a home in there but he would not make a living. This land that is left there would be suitable for goat pasture in the

spring when the grass was a little green, what little grass grows there. The checker board shown by this map in color shows the lands of the Oregon and California Railroad Company in light green. He thinks that that map practically defines the timber land both east and west of the railroad as to the main body of the land; where this main body begins is about the line of the timber land, it is probably varied a little in places. The southern part of that map shown in shape of checker board form, indicates all timber land down through there, pointing to the green squares as shown on the lower half of it. He would say that about seventy per cent of the unsold land of the Company in Douglas County was merchantable timber land, that would leave about thirty per cent of that land that would be practically worthless, the soil being rocky and unfit for cultivation of any kind. The country is all very rough. The Gardiner Mill Company he believes is the only Company at the present time of those shown on the map that are manufacturing lumber out of their holdings in Douglass County. The Neenah-Oregon Land Company is a Wisconsin corporation and he thinks also the C. A. Smith Company. Kendall Brothers is a partnership of Pittsburg, Pa., Pillsbury Lumber Company he presumes is a Minneapolis concern. The Lennan Land Company he thinks is an Oregon corporation with offices in Minneapolis. The Bradford-Culver Timber Company is a Wisconsin corporation. The Myrtle Lumber Company is an Oregon corporation, but the principal stockholders are the Lovejoys who are eastern people. The Gardiner Mill Com-

pany is an Oregon corporation whose principal stockholders are California people. The Weyerhauser Land Company represents the Weyerhauser interests and everyone knows who they are, not a resident, but a foreign corporation. A. H. Hinkson lives at Eugene, Oregon. Sparrow, Coach & Kroll he believes is an eastern company. The C. A. Smith Company is not manufacturing any lumber from its Douglas County holdings, but it has holdings also in Coos County and a mill at Marshfield. With the exception of the Gardiner Mill Company, none of these large holdings are being utilized for the manufacture of lumber or any other useful purpose. These timber lands of these various Companies other than the Oregon and California Railroad Company in his judgment, are the best timber lands in Douglas County. He is acquainted with the stumpage or number of thousand feet on a forty on some of these lands. Township 26 south, range 9 west, is very heavily timbered. The land in section 14, township 26 south, range 9 west is owned by the C. A. Smith Company and will run 16,000,000 feet of timber to the 160 acres. West of the railroad in Douglas County in the Coast mountains the land is reckoned among the best timber in the State of Oregon. On the east it is not so good. With the exception of the Gardiner Mill Company of which he can speak positively and the exception of the Neenah-Oregon Land Company, all this timber was bought about five years ago by these Companies, that of the Neenah-Oregon Land Company has been purchased within the last two years. This map shows all the

streams, all the roads, all the donation land claims taken up under the donation land law, the principal towns and postoffices in the County. It does not show the mountains but that is shown by the topography of the map.

Whereupon on cross examination witness testified that he was in the mountains every summer with the timber cruisers when they go out but he is not a timber cruiser. He is an office man and has a working knowledge of timber which he obtained while in the employ of different companies and while working for himself. He was in the employ of the Southern Pacific Company for about two years. His principal knowledge concerning these lands was not gained while so employed. He had four or five times as much experience in timber lands since he left the Southern Pacific Company than he had before that time. While employed by the Southern Pacific Company he did work with reference to these lands both in the field and office, investigating the matter of squatters upon the land and reporting upon the kind of land that it was. He would examine and report on the character of the land, also on the people who had settled on the same. His work was all over the State, but the principal part of it was in Douglas and Jackson Counties. He was in the employ of the Company during the years 1905 and 1906. In 1907 he entered the employ of Frank E. Alley who was engaged in the abstract business and witness was in business for himself at the present time. "Defendants' Exhibit 312" while showing Douglas and Coos Counties, the color-

ings and work of witness on this map was confined to Douglas County. He was raised on a farm in Eastern Oregon and Ohio, but had never farmed in a timbered country such as this. He is acquainted with the possibilities of the soil by observation. He knew of no sales of logged off land in Douglas County, unless it would be down on the Coast. His knowledge concerning the settlement of this land was obtained from the records. His knowledge about the conditions and settlements of the land about 1850 he obtained from the Land Office records. He could tell when settlements and filings were first made upon the land by the records in the land office. In the entries under the Donation Law the applicant states when he first settled on the land and that is what he formed his opinion from. There are several small companies operating in Douglas County that are not shown on "Defendants' Exhibit 312." He obtained his knowledge as to the residence of the corporations mentioned by him from the records in the Clerk's office and personal correspondence with the people. He does business with quite a number of these corporations. He bases his knowledge as to the amount of this land that is valuable for cultivation or could be rendered agricultural land from his own observation. Somebody else might disagree with him on that. There is probably a little land along creeks in sections 1, 5 and 7, township 32 south, range 4 west that could be cultivated. In township 29 south, range 5 west there is not much agricultural land in the township except in sections 30 and 31 and a little in 33 and 35, but he could not state posi-

tively as to the last two mentioned sections. In township 30 south, range 5 west, there is some very fine land, but not unsold railroad lands. Referring to township 30 south, range 5 west, the agricultural land follows the river up to about the southeast corner of section 9, then begins to narrow up into the canyon, closes in and opens out above in three or four places and then it is a narrow canyon all the way up. There is no agricultural land in the unsold railroad lands in township 31 south, range 6 west, but he cannot tell exactly whether there is any land of this character in section 29. He speaks as to a whole township. There is very little agricultural land in that township. In 23 south, 6 west there is some fairly good land along the creek but this land is all heavily timbered. The same conditions exist in township 24 south, range 6 west. The land in there as a rule is pretty fair down in the southern part of the township. This land is close to Oakland. In township 24 south, range 6 west, through which he had marked the Umpqua River as running he would say that it was very rough. The river runs through a deep canyon and that country is all very rough through that whole township, odd and even sections. There are a few farms but not very many. There is some farming land in this township. In his judgment not more than one-tenth of one per cent—five or six hundred acres—out of the total of 616,843 acres in Douglas County is in its present condition suited for agriculture.

Whereupon on re-direct examination witness testified that the settlers referred to on this unsold railroad

lands they called squatters who go out and build a little cabin, clear a little place for a little garden, some of them would and some of them would not do that and start in to making posts, cutting and selling wood. In no case that he investigated had the so-called settler made any offer to the Railroad Company to purchase the land. They were trespassers. In his experience these cases were few and were in Douglas and Jackson Counties. There had been a number of homestead entries relinquished and a timber and stone filing made on the land. As far as he knew, cabins and improvements of homestead entrymen on the even sections within the limits of the grant had all been abandoned as soon as title was perfected and the title passed to timber companies, especially in a certain section. These lands that were homesteaded and subsequently entered under the timber and stone act in even sections, were all timber lands.

Whereupon witness testified.

Q. Well, then, if I understand you, Mr. Zurcher, there are not very many settlers within the limits of this grant, on the even sections, at the present time?

Objected to as leading.

A. There are not. Take practically all this territory in through here (pointing to the southeast part of the map), and all you will find is an occasional bachelor's cabin. Once in a while you will find a man with a family on a little creek. You won't find any farming country in there at all.

Q. These cabins that you refer to on these home-

steads, what were they? What kind of structures or homes were they?

A. Log cabins.

Q. Are they inhabited at this time?

A. Some of them are, as I say—an occasional one.

Q. Well, those that are abandoned are not inhabited, are they?

A. No, sir.

Q. These that are inhabited, along what streams are they?

Q. Where are these people's claims or settlements with reference to streams and little valleys, if there are any?

A. Well, you will find some along the South Fork of the Umpqua River, up on Cow Creek, and up on the West Fork of Cow Creek, on Camas, and a few up on Rock Creek.

Q. State to the court the extent of the agricultural lands, if any, along those creeks, that are within the limits and still belong to the Oregon and California Railroad Company. Is there any of it?

A. There is very little, except, as I say, along the creek bottom, there would be a little land that might be susceptible to cultivation after clearing it.

Q. How large a spot, we will say to a forty, or to a quarter section, where there would be a chance for a man to make a clearing and to put a house, on any of

this land that is unsold belonging to the railroad company?

A. Well, I would say that a ten-acre tract would be a large one.

Q. And what would be the character of the balance of the land?

A. It would be hilly and covered with timber.

Q. You have taken into consideration all these facts in making your estimate of percentages, have you?

A. Yes, sir.

Whereupon witness testified that his knowledge, concerning the homestead, timber and stone and other public land entries on the even sections within the limits of this grant in Douglas County, was obtained from the Land Office Records as to what the notices are, and from traveling through the country all over Douglas County. He found that in the even sections, which were the only sections that could be entered, he would find a timber claim entered and a homestead entered, for instance one would go out and take up a timber claim and contiguous to it would take up a homestead, live on it there until he would commute it and either hold it for investment or sell it to some timber company. The lands obtained through a majority of these entries have been sold to timber holding companies. This country is all rough, broken land, heavily timbered.

Whereupon upon cross examination witness testified that not all of his information with reference to the set-

tlers on even numbered sections was obtained while in the services of the Oregon and California Railroad Company and engaged in ejecting settlers from the lands in Douglas County, but that is where he received his first information.

Whereupon upon re-direct examination witness testified that he was employed by the Oregon and California Railroad Company, and not by the Southern Pacific Company.

Whereupon C. H. STEWART called as a witness on behalf of defendants being duly sworn testified that he is sixty years old and is manager of the Commercial Club at Albany and came to Linn County in 1865, and was County Clerk of that County from 1882 to 1884 and County Judge from 1904 to 1908. After the close of his term as clerk in 1884, he went into the hardware and implement business and remained in that business until about 1902. He was in the real estate business for one year prior to the time he came to the management of the Commercial Club of Albany. The name of his firm was Steel & Company, that was in 1902 or 1903, not very largely outside of the city. He was County Clerk two years and as such ex-officio a member of the Board of Equalization for Linn County, and was County Judge four years and as such a member of that board. He is to some extent acquainted with the unsold lands of the Oregon and California Railroad Company in Linn County. He has lived in Albany and in Linn County during all the time he has been in Oregon and he has, if he remembers correctly, been through 1 and 2 east considera-

ble, hunting and fishing and several times in looking at the general character of most of the land in 1, 2 and 3 east for the purpose of taxation. He has been through considerable of ranges 1 and 2, townships 9, 10, 11 and 12, and in that section in the south part of the county in township 15, he thinks that runs to 1 west. He has been over that part of the lands considerable at one time. In the north part of the county he was there several times hunting and fishing, but while he was County Judge he went through townships 9, 10, 11 and 12, ranges 1 and 2 east and down in township 15, probably 1 west and 1 and 2 east, for the purpose of taxation, and he thinks his knowledge would enable him to testify in a general way as to the timber or general character of these lands, at least they determined the valuation of the lands for taxation purposes on account of it. To which testimony complainant objected as incompetent, irrelevant and immaterial and it was agreed that this same objection should be deemed taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon, and public land entries thereof.

Whereupon witness testified that he supposes that half of the unsold lands of the Company would be cultivated, provided they were cleared, the other half is somewhat rocky and broken, so hilly that it would hardly be susceptible of cultivation. They taxed that half that could be utilized for agricultural purposes if cleared of the timber, at about one-half of the value of the other holdings of private companies; this that was so taxed was

timbered, but the character of the timber was not so good. It had been culled by previous purchases. That part of these lands that are covered with timber would be so expensive to clear that it would be almost prohibitive. He would say that it would cost from $150 to $200 an acre to clear. The chief element of value of these timber lands would be the timber. The yellow field on "Defendants' Exhibit 259" beginning at the towns of Cottage Grove or Eugene and extending north towards Houlton beyond Portland, with Salem, the capital, about the center and a little farther south and a little west of south, with the town of Albany in the apparent center at the widest portion, represents the Willamette Valley in Western Oregon. North of this land shown on that yellow field with Corvallis and Albany near the center extending from the east boundary of the indemnity limits of this grant and the west boundary of the indemnity limits of this grant towards Yaquina Bay, was taken under settlement laws prior to the appropriation of these lands by the Railroad Company. There is very little soil on these unsold lands in Linn County; which he has testified are rocky, precipitous and hilly. Probably on the south side of these mountains where it is very rocky and where the winter rains have washed the soil entirely off, it is not susceptible for cultivation at all. The foothills where these unsold lands in Linn County are found, are simply called the foot-hills of the Willamette Valley, or Cascade Mountains. The Cascade Range runs parallel nearly with the Willamette Valley on the east side and runs north and south.

Whereupon on cross examination witness testified that he is manager and secretary of the Albany Commercial Club; has lived in Albany since 1865 and until 1882; was connected with a newspaper, from the time he left school in 1867 and was County Clerk from 1882 until 1884 and from 1884 to 1904 he was in the hardware and implement business and County Judge from 1904 to 1908, and since that time he has not done anything excepting that for a year and a half he has been secretary of the Commercial Club. He has never been a farmer or engaged in farming, but has been very close to that business, selling implements all over that country. He does not own any land in that country but had owned one piece inside of these holdings in 11 south, 1 west, but has forgotten the section. It was partly good agricultural land, the agricultural part was very good. Practically all of these railroad lands in Linn County are rolling. Ranges 1 and 2 east are not in a mountainous country, they do not extend up to the Cascades proper, 3 would get up into the mountains. There are a number of ranches south of that place. He is acquainted with the Maley ranch, the old Thompson ranch, the Hiram Billings place. This railroad land is more broken than these places. These ranches are along close to the Santiam Valley. When one gets back on the ridges, it is very broken and rugged and sometimes rocky. The railroad lands are relatively in the same position as these ranches. The railroad lands are south of them. Counsel for the Government has picked out some pretty good places there mentioned by him. There are other places

right by the side of those, or very close to them, that are very bad, a great many abandoned right there. One will find settlers running away up as far as 4 east and following up these valleys that break out of the mountains. The good land runs back following the valleys and people are living there, making their homes with their families, but not on the ridges; they would be in the valleys. Stemgrant, the son-in-law of Billings, has a ranch that is in the valley, part of it runs down on the creek bottom and it is rolling land. A great deal of this land in township south 13 and 14 was timber land at the time it was entered, as shown by present indications and surroundings and has been cleared off and made good ranches of. He thinks that fifty per cent of these railroad lands in Linn County would be susceptible of cultivation if it was cleared of timber.

Whereupon witness testified :

Q. Well, now, Mr. Stewart, in your opinion, don't you think that it would pay to clear that land and make homes there. If these early settlers could go onto that land and clear it when they couldn't sell their timber—there was no market for their timber, it was valueless—wouldn't that timber assist in paying, if not entirely pay the expense at the present day?

A. Where those settlements have been made, it is where they have found some clear land. The land that they have in cultivation has not all been cleared off. It has not been cut right out of the virgin forest. They have taken advantage of clearings, and, of course, cut off some

timber, too, in those creek bottoms. They cut that and slashed it, and that has been cleared off.

Q. There has been considerable land cut off and cleared in that country solely for the purpose of marketing the timber?

A. Yes. They have gone on the hills—some people have gone in there. I remember in 1882, when I was clerk, there was a small colony came in there, and something like eight or ten of them took claims up there. Homesteads. Several of them abandoned those claims, and came down in the valleys and rented land, and now own good farms down there. The other men are up there grubbing yet, and they never will get through.

Q. That is your opinion in the matter? You never farmed?

A. I have been very close to the farmer, because I sold him what he did his work with, all of his implements.

Q. But you have never engaged in the industry?

A. No, not very largely. I have hired some of it done. It doesn't pay.

Q. You feel that it doesn't pay to clear land in order to cultivate it?

A. Oh, no; no, life is too short for that.

Whereupon witness testified that up in his part of the country he does not think there is as much cleared land as there was forty years ago. He does not mean

that he thinks that the people are leaving their lands that they have cleared, but that the new growth of oak and fir is coming up a great deal faster than it is being cleared. Up to that time it was nearly clear. The settlements have increased in this country. Not very many entries of Government land or homesteads have been taken up throughout the foothills and mountains—that was nearly all taken up before the railroad grant, most of it, but since, there have been some entries of Government lands along in favored places. Speaking of donation claims, homesteads and pre-emptions, he knows that in 1882 to 1884 when he was in there, the business was all done before him and there were very few of these entries. They came to him as County Clerk to execute their papers because it saved them the trouble of going either to Roseburg or Oregon City, that was in 1882 to 1884. Whenever they clear off this land it is good for grazing purpose. It is good grazing and the land itself is rich. Wherever it is cleared of brush or timber, it would be splendid grazing land. The undergrowth is very thick on the west slope of the Cascades. They raise considerable fruit around Albany and nearly all of these railroad lands would be good fruit land. It is not sold at high prices as fruit land, as it is at Hood River and Medford. If these lands were cleared off, it would be as good fruit land as Hood River or anywhere else. The fruit land in the grubs runs from $20 to $50 an acre in his county, but they also raise goats in Linn County and this land in the foothills of the mountains would be fine grazing. A very small portion of this land is suscepti-

ble to cultivation in its present state. He has passed through these unsold lands concerning which he has testified, and something like he supposes half a dozen times at different places, out on road business and then at that time in 1904 they were beginning to raise the taxation on timber lands and that subject was up very often in his Court. They were looking into that as much as possible. Whenever he got out into the foothills, although he does not know that he ever went just especially to look at these lands, he always did look at them, while he was there and had them pointed out to him as much as possible, for the purpose of bringing the matter before the court, to settle the valuation of them for taxation purposes. When he was traveling through he would necessarily look at the lands. He did not follow the lines or anything of that kind but had certain sections pointed out as Company lands and generally talked with farmers and settlers in the neighborhood about them. He would not go through these lands like a cruiser would, but made an examination for the purposes of valuation and fixed the values with the assessor. The assessor did not make a personal inspection or have a cruiser inspect these lands. They went up there personally and passed their judgment upon this land by passing through them.

Whereupon on redirect examination witness testified that he knows of quite a number of homestead entrymen, who as soon as they secured their title from the Government sold it, to some of these Eastern land syndicates. These homesteads were on the even sections and were about of the same character as the lands that he has

been describing. They were timber lands, that is, the value was in the timber and not in the land.

Whereupon on re-cross examination witness testified that a number of settlers have gone up there and remained on the land, homesteaders, one generally finds them along these streams, or in some places where the rolling country between is open, they have taken advantage of that. It is true to some extent that as the clear lands at the bottom of the valleys are settled up, people have been taking the poorer lands, and going up into the hills, but there has been very little clearing going on up there, one will find a few places where they have done that but very little.

Whereupon W. H. FALLIN, called as a witness on behalf of the defendants, being duly sworn, testified that he is forty-nine years old, lives at Grants Pass, Oregon and works for Josephine County in the assessor's office. He has been assessor of Josephine County since he was elected in 1902. He was deputy sheriff and tax collector four years before that. During his time of office as assessor he had absolute charge of the classifying and cruising of all the lands in Josephine County, railroad, Government and all of it. As assessor he had been on the land a good deal and really knows about the lands. He never cruised any and don't know anything about cruising. The unsold lands of the Oregon and California Railroad Company is mountainous, part of it is timber land and part of it is barren. It is bald hills considerable of it; he realy did not cruise it, there wasn't enough timber on it to cruise it. To which testimony

complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the character of the lands within the limits of this grant, settlements thereon and public land entries thereof. Whereupon witness testified that this barren land that is free from timber, is rough, rocky and barren granite, with some gass growing on it. He would think there was not over five per cent of this unsold land in Josephine County that would be suitable for agricultural or horticultural purposes, that one could use at all. Wherever there is a stream or creek, there is probably a little bit of bottom land there, that might be used for agricultural purposes. There might be a little hillside, but in certain townships, say 36-5 near Grants Pass, there was some lapsed contracts that have gone back, where the land is fair, that can be used as agricultural land, but this is all scattered, isolated land.

"Q. How large a parcel with reference to, say, any particular 160 acres would this parcel or tract be that could possibly be used for any agricultural purpose?

A. Well, there are a few instances where you could get—well, you might say, take 9 Section 36-5, the Southwest quarter, you could get probably 80 acres out of that, and you might out of the Northwest quarter—the west half of the west half—that is pretty fair land; but it has gone back to the company; it has all gone back to the company.

Q. That is to say, this that you refer to as possibly adapted to some agricultural purpose is land which had been years ago contracted for sale by the company and then forfeited by the purchaser?

A. That is it.

Q. Well, then, if the purchaser let it go back, the land was then of not very much value, was it?

A. They couldn't make a living on it. I knew the people."

Whereupon witness further testified that a very small per cent of the lands that are covered with timber, where timber is the chief value, could be utilized for agricultural purposes after the timber is removed, he would say that it was not over five per cent, that would be putting it pretty strong. The character of the soil of these unsold lands in that county, even where the timber is standing and growing, is generally granite formation, called granite land. Grass don't grow where there is heavy timber, but will grow during April, May and June, when there is some grass, and one can graze almost anywhere in the open country, all over there, but that don't last long. There is a kind of browse,—there is pea vine there, and different stuff growing in that country.

"Q. Suppose that an actual settler, so-called, should apply to the company under the act of April 10, 1869, to buy at the rate of not to exceed $2.50 an acre, a tract of this land not exceeding 160 acres, and the company should sell it to him, and there was no other land there over which he could roam his stock outside of his 160

acres, what would be his ability to make a home of his 160 acres, and support himself, or himself and family if he had one, in your judgment?

A. I do not think he could make a living on it. In fact, they don't live there. There is many a township where there is not a settler living there.

Q. Why wouldn't he be able to make a living, as an actual settler, for himself and his family?

A. The ground wouldn't be productive enough. He couldn't raise anything. And he couldn't graze enough cattle on 160 acres—there wouldn't be enough sustenance for them to live on.

Q. Something has been said in the record in this case about clearing off some of this land by grubbing it, burning the timber stumps, and then seeding it to grass. I wish you would state, in your own way, whether or not any of this land is available for such use, and whether it would be at all practicable for this so-called settler to make a living that way on 160 acres.

A. There are thousands of acres in that country without any timber at all. They had bald hills—there is no grass there only for a short time.

Q. Couldn't a man have some of this land cleared, and take 160 acres of it, after the timber was cut down, seed it to grass or some kind of forage, and make a living by raising stock on the 160 acres?

A. Well, he might, but I don't believe but a little of it. Of course, he might pick out a piece once in a while

that you could do that.

Q. Do you know of any instance in that county where any other party is attempting to make a living in this way on this land, as grazing land, limiting it to 160 acres?

A. No, not in those outside districts.

Q. I am not inquiring of you, Mr. Fallin, about the bottom land in the Rogue River Valley, or the land that was taken under the Donation land law in such portions of the county as were settled in the fifties and later, under the Donation land law or prior settlement laws, but I refer to lands of the class of these unsold lands of the Oregon and California Railroad Company could a man make a living in any way on any of these lands, excepting by selling the timber?

A. Of course, I couldn't tell whether he could, or whether he couldn't make a living. They don't do it—they don't try to do it. There isn't any one living in those districts. Of course, a man might or he might not."

Whereupon witness testified that he does not think there is a settlement in Township 33 South, Range 7 West. There is a man mining in Section 34 and there is another man in that township, but no one lives there; and in Township 34 South, Range 7 West, is about the same, the railroad goes through the edge of that township. Leland is in Section 8, Township 34 South, Range 6 West. One could not get more than ten miles away from that, and if one did, he would be closer to Wolf Creek. There are no settlements in that township. There

are some miners there. The reason the country is not adapted to settlements is that they cannot live there. It is different in different townships. He could show a settlement in Township 33, Wolf Creek, and at Tyler Creek, but between there and the lower part, that is a mining country. There is a settlement at Wolf Creek in the little valley along the creek; which valley is narrow, averaging about a quarter of a mile on either side up, and gets into the mountains and is abrupt. There is some red soil in Josephine County, generally on this high land, which is very good; and some white granite, which is not. The red soil is considered good fruit land; and in that red land are all the gold mines and placer mines, the banks are red. When one gets a hillside that is protected right he may get a piece of land that is good for fruit culture, but the per cent would not be great, it would not be over five per cent on the whole, he has included that character of land in his estimate of five per cent, he figured on the whole thing. As a general thing the land in Josephine County is not heavily timbered, although in Township 34 South, Range 5 West there is some very heavy timber on the east line, which is good timber, down in 39-5 and 6 West, is good timber, generally it is light timber, but of good quality. There is sugar pine in there and it is high grade timber, what there is there. There is a reserve there, as shown on Defendants' Exhibit 259, and also a reserve known as the "Ashland Forest Reserve." These reserves are mostly timber lands. The Siskiyou Forest Reserve was established in 1907, and is in Josephine, Curry and Coos Counties, he thinks. He does

not know whether any of it is in Douglas County or not. The general character of those lands is timbered lands, mostly unsurveyed land, and as far as Josephine County is concerned, is unsurveyed. These reserves run into the grants. Whereupon on cross examination the witness testified:

"Q. What years did you say that you were assessor in Josephine?

A. I am assessor now.

Q. You are at present assessor?

A. I am working at the office, and I have been since 1902. That is when I was elected. I have been connected there ever since.

Q. You have been assessor since 1902?

A. No, not assessor. I have been working in the assessor's office, but not assessor.

Q. You never have been?

A. Yes, I was six years.

Q. What years were those?

A. 1902 to 1908. I had the timber cruised while I was assessor.

Q. Who is the present assessor?

A. Pollock.

Q. Now, you are a timber cruiser, Mr. Fallin?

A. No.

Q. What has been your business during the last 15

or 20 years?

A. Assessing.

Q. Assessing all during that period?

A. Yes.

Mr. Fenton: During the last 15 or 20 years?

A. Oh, no, I was deputy sheriff four years."

Whereupon witness testified that before entering the public service he was in the merchandise business at Grants Pass. He has never been employed by the Southern Pacific or Oregon and California Railroad Companies. Generally speaking Josephine County is a good fruit country. They raise good fruit there. The same general character of soil does not exist all through the county. There are favored localities where they raise good fruit, and others where they cannot raise it. A large portion of these unsold railroad lands is rolling, and might contain considerable soil for fruit raising. He has never been engaged in the fruit raising business, except just around his home; he has some trees at home, in his door yard, and has some apples, peaches and plums, and different things like that. Grants Pass is the center of a fruit raising country. He had charge of making these examinations of these lands for classification with reference to assessments. He hired men, and thinks Mr. Pollock the present assessor, was his deputy and was one of the cruisers employed by him, getting a cruise of the lands. This classification is on record. There is one in the assessor's office and another in the clerk's office

which is the same thing. All of these lands of this grant are classified as to being timbered or agricultural and assessed on that basis. He has assessed in every place and went all over the county. Has not inspected personally all of the land; never went on lots of the land, because he had no occasion to go there. Every place where there was a settlement he had been, assessed the people in there and looked at the land. By settlement he means where there is anybody to assess; he would go and see them, and has done that for many years, that is go and see the settler all over the county. He did not go to every place one year; but he did go, and he has testified from what he has observed during these trips.

"Q. You never made an examination of the 40-acre subdivisions of these lands, to see if 160 acres could be selected that would contain enough land to make a living?

A. No; no, I never did that personally.

Q. Not money, but a living for a man and his family—a settler and his family?

A. I have only examined the reports that the cruisers brought in. They reported on the land.

Q. You base your knowledge largely upon that?

A. Yes to that extent."

Whereupon witness testified that taking all the lands in Josephine County there are about 20,000 acres in cultivation, that is what the assessment roll shows. He does not think there would be over five per cent of the whole

land in the county that would be susceptible of cultivation, and does not believe there is that amount; it might run a little bit more, but not much, that is the general average, he thinks, of course, that is only his opinion. Whereupon on redirect examination witness testified that the fruit land adapted to fruit culture and used for fruit in Josephine County is all over the county. They raise fruit all over Josephine County, where there is any settlement. Fruit that is grown for commercial purposes is chiefly located in the Rogue River Valley, on the valley ground. The Rogue River Valley, as it passes through Josephine County, is not very wide. Below Grants Pass it would probably be a half mile on each side of the river in width; that is, the bottom lands. He does not mean the foothills. It is about a mile wide for probably ten miles below Grants Pass. Above Grants Pass it is not so wide. There is not much there, it is a narrow valley. There is some very good fruit lands in the foot hills immediately adjacent outside of this valley. Another half mile on each side would be along the sunny foot hills, along this valley. A lot of this land within that mile which is broken and hilly and some of the soil is decomposed granite and is not all in cultivation by any means. The lands adapted to fruit culture within that mile limit would be more or less spotted. The assessor's rolls show that there is about 20,000 acres of agricultural land in the entire Josephine County, that is, there is that much on the assessment rolls in actual cultivation. He does not know how long it has been since the first lands were settled in the Rogue River Valley, but it was by

Donation Claims, under the Donation law. Grants Pass has been a town since 1883, or 1884. He does not know when the railroad was constructed to Grants Pass. He came in 1888 and the railroad was there when he came and had been built through to the California line at that time. He only knows from hearsay when it was completed from Ashland south; it was through when he came there. The population of Josephine County is about nine or ten thousand.

Whereupon IRVINE P. GARDNER, called as a witness on behalf of defendants, being duly sworn, testified that he is thirty-seven years old, by occupation a surveyor and timber estimator, and resides at Myrtle Creek, Oregon, and has lived in Douglas County between five and six years, and has been buying and estimating timber during that time. He had charge of appraising Indian lands for about two or three years, in Minnesota, for the Government, and took the ranger examination and surveyed out and selected ranger sites for the Government in the Cascade-Umpqua National Forest Reserve for a few months, and cruised timber for the last fifteen or sixteen years for a living. During his summer vacations, while at college and law school, he ran compass in Northern Wisconsin and Northern Minnesota, with the exception of one year of the Spanish-American War, in which he participated. In the fall or winter of 1898, he went into the woods in Northern Wisconsin, estimating and logging, and worked there two years, running compass most of the time, and doing some estimating. He then went with Major G. L. Scott, Indian

Agent at Leach Lake, Minnesota, and took charge of the surveying and appraising of Indian lands for him. The year prior to that he was superintendent of logging on the Northern Pacific Railroad for the Ashland Iron and Steel Company—estimated timber and cut it for the furnaces. He was with Major Scott then for about two years, and then with Major Michelet at White Earth, Minnesota, in the Government service. He then estimated and bought for Nichols & Chisholm Lumber Company and the Shevlin Company—estimated and scaled in Minnesota. For the last four years he has bought and estimated for the Neenah-Oregon Land Company of Wisconsin, a corporation of Neenah, Wisconsin. His headquarters have been in Douglas County, and all his work in Oregon has been in Douglas County, with the exception of a little in Josephine and Jackson. He has cruised in Douglas County about 4,000,000,000 feet of timber situated on about 100,000 or 125,000 acres. The lands except in the indemnity limits, have been altogether where people have filed or they have been the even sections. He has been in the South Umpqua country, practically to every quarter post and corner, and on most of the railroad lands, with the exception of a year ago this winter, which he spent in the abstract office which they have, in which the President of his company has a half interest, referring to the Commercial Abstract Company of Roseburg, he has been in the woods continually, probably two hundred and fifty days in the year he has been estimating, mostly in the South Umpqua country. He has estimated and bought all the Neenah-Oregon

Land Company's lands on the South Umpqua River and Myrtle Creek. He has a general or specific knowledge of other unsold lands of the Oregon and California Railroad Company in a good many localities in Douglas County. He has been out estimating for other people, and one year before he went to work for that Company he worked on general estimating, estimated all over the county, wherever his clients wanted him to. There are three or four methods in use by cruisers. The two general basic methods are, what are known as single running and double running of forties. To single run a forty, one starts at a known corner, and would go north or east or south or west, as the case may be, two tallies or 250 paces; then run directly through the land which they are estimating north, east, south or west, as the case may be, tranversely, directly across it. That puts one on each ten acres of the land that one is looking at. In double running, one goes half the distance, and then horseshoes it, as it were, or 125 paces, which would put one on every two and one-half acre tract of the land. In order to ascertain the amount of timber, one could take it, either strip method or circular acre. The strip method is taking everything for 250 paces, or two tallies, thirty-three feet, on each side, which gives an acre. The circular method is standing in one place and taking everything in a circle within approximately fifty-five paces, giving a circular acre. The contents of a tree, as a general rule, is arrived at through volume tables, which are tables made through the figuring of contents of trees at mills. There are the Clement Table, King's, Spalding's and

several others. Spalding's is one of the standards. The Government has adopted Scribner's Decimal C Rule as its standard. As a general rule, a cruiser obtains the height of timber through pacing down timber. In almost all forests there will be a certain percentage of down timber. Probably on a quarter section one would pace ten or twelve, or even only four or five or six trees, to a certain diameter, starting from the butt pacing, and get the height that way. All volume tables practically are made either stump or breast high, inside the bark at the stump. In exact estimating which they do, they always use what is known as a diameter tape, which gives the circumference. Measuring around the circumference and subtracting the bark, will give the diameter figured out. In getting the height of the trees by computation, where it is not paced, one can use a clinometer, which is a scale figured out, or can use half of a square, with a small level on it, and by pacing the base of the square, and sighting up to the top of the hypotheneuse, where one can catch the top of the tree—the base and perpendicular will be the same, what one would have to pace on the base would give the height of the tree. The remaining unsold lands of the Oregon and California Railroad Company in Douglas County, Oregon, would average, probably, 35,000 feet board measure straight through per acre, counting everything. To which testimony complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the char-

acter of the lands involved within the limits of these grants, settlements thereon, and public land entries thereof.

Whereupon witness testified that these unsold lands are chiefly valuable for their timber. In the present condition, at this time, a great deal less than one per cent of this total area, in his judgment, would be available for horticultural or agricultural purposes. Twenty-five to thirty per cent could be farmed after the timber is removed. He has a homestead of his own, and what clearing he has done has cost him from one hundred to two hundred dollars per acre, and he has cleared a great deal of land, and helped clear land in camps.

Q. From your knowledge of the timber that is on this land, that you say might be utilized for some agricultural or horticultural purpose after the timber was cleared, what would you say the average cost per acre would be to clear such land and make it available for use?

Q. Go ahead and answer.

A. After the timber is cut or before, at the present time—take it in its present state?

Q. Take it as it is?

A. Taking it in its present state, the average cost would be from $75 to $100 per acre to clear.

Q. Do you say, or do you think that you could clear some of this land that runs 6,000,000 feet board measure to a quarter section, at the rate of $100 an acre?

A. Why, it would have to be done in a commercial way, with donkey engine and derrick. Certain people are contracting to. It costs from $10 to $25 an acre to slash, and it will take on your trees anywhere from two to ten sticks of powder per stump. I never figured it out that way, but it would take—some of it could be done. It would probably average nearer $150 than $100 to clear it free of stumps.

Q. What is the fact, if you know, as to the presence of the roots in the ground of these trees, after the stumps are blown out by powder?

A. Well, if they blow the stumps out, the roots will bother if not pulled up for a few years.

Whereupon witness testified that these unsold lands are practically all mountain lands. In Douglas County, the part that he has been over, runs from five hundred feet, which is the elevation of the Umpqua River at Roseburg, to points in one or two places, five thousand feet. The majority of the divides between the different places, the summits of them, will probably average from twenty-eight hundred to thirty-five hundred feet, that is, between the different ones—Cow Creek and the North and South Umpqua. A large majority of these lands is in the Cascades and Cascade foothills and Coast Range and Coast Range foothills. The average elevation would probably be 2000 feet. The majority of the lands are at an elevation of about 2000 feet, because in the bottom of the valleys, the elevation will run from 1000 to 1500 feet, and the crest from 2500 to 3000. He uses an

aneroid in all his work and takes the elevation on every ten acres and every section line in the country, and at all his bases, he takes the elevation. He bought or estimated all of the lands indicated in red on Defendants' Exhibit 312, owned by the Neenah-Oregon Land Company. He has been over township 25 south 2, for the Ferry Estate, and has been in a great many of the townships at different times. These lands are practically all heavily timbered. The entire holdings of the timber companies represented in there will run very close to 60,000 or 65,000 feet board measure per acre, referring to all the timber holdings represented on that map, Defendants' Exhibit 312, other than the Oregon and California Railroad Company. The majority of these scattered parcels about Looking Glass, up to, say, Yoncalla, shown in green, are open and barren lands, along the summit of the divides, which were not purchased with the bulk of the land. The unsold railroad lands indicated by these colors in green, within the area just mentioned, appearing still to belong to the Railroad Company, are mostly grazing lands in the spring. A great deal of that land was sold by the Railroad Company on contracts that were defaulted, the purchasers did not make the payments. Some few of these scattered parcels in that area along the river are agricultural, but most of that soil is bad. It could be settled on, but a person could use it only for grazing or pasturing, that is, a majority of this land. A settler could not make a living on any of it, or very little. From the records of the land office and district court, and the abstract company with which

he is connected, a large area of lands that are unmarked with any color, that are white on this map—Defendants' Exhibit 312—show that they were purchased from the railroad company under contracts, or else taken as donation land claims, that is in the old settled part of the Umqua Valley. He has been all along the Umpqua River from Winchester Bay to Roseburg, and up all around the summit of the divide, and inspected all the range on the summit of the divide, on the South Umpqua and Rogue River divide. Ninety-five per cent of the even sections, within the limits of this grant and adjacent to the railroad lands, is covered with merchantable timber. From his experience in the abstract office and looking up title, checking blue prints, etc., he knows that the title to the even sections, where the title has been disposed of, has passed into the hands of timber companies, a good deal of it. It was originally entered under the Timber and Stone Act, the Homestead and the Commutation or Cash Entry Act, and scrip. A great deal of it has been taken under the Act of July 30, 1898, and the Acts of 1902 and 1903. The Act of July 30, 1898, is the act of Northern Pacific scrip, individual claimant scrip. The Neenah-Oregon Land Company has bought probably thirty homesteads, which it will be glad to lease for taxes, and cannot lease one. It has offered to lease these homesteads to persons who would take possession for the payment of taxes. In five years it has leased one piece, very close to a school house up in the mountains. Very little of this land is capable of being used for agricultural purposes. In the South

Umpqua country, in Township 28 South, Ranges 3, 4, 5; Township 29,—1, 3, 4, 5, 6, 7, 8 and 9; Townships 31, 32, 33, most of 34; 31—1, 2, 3, 4, 5, 6, 7, 8; 32—1, 2; parts of 32—3; 32—4, there are not five homestead entrymen living on the land, title to which they obtained under the homestead law. There may be more than five, but there are very, very few. Looking over the country generally, his blue prints and in the abstract office, probably in that territory five hundred people obtained that land under homestead or the commutation act. The rest was taken under the Timber and Stone Act. He is not stating anything but what he has examined himself personally, through cruising. A great many of their cabins have been burned, and a great many have been abandoned. Some few of them, the patches that they have are being used by cattlemen and others, who keep up the fences.

Q. What I am getting at is, the entryman that settled the land, what has become of him in nine cases out of ten, if you know?

Mr. Rabb: Objected to as leading, suggesting to the witness the answer to the question.

A. Sold out and out of the country, most of them. A majority of this land in our part of Douglas County was settled in 1902 and '3 and 1901, a great deal of it by people who came from Michigan, Wisconsin and Minnesota and took up land.

Now, in the main, to whom were these homestead claims or homesteads transferred,—to what class of pur-

chasers, from your knowledge, if you know?

A. Timber companies.

Whereupon, on cross examination, witness testified that he was born in the State of New York, and went to Omaha in 1887, and spent all his summer vacations, until 1898, in Northern Wisconsin. Bayfield was his summer home. Until that time he ran compass, scaled around the mills, worked on the booms, worked with boats. When there was nothing else doing, during his vacation, a good part of it, he worked in the timber business, that is, worked at it when he was not fishing or hunting. By an estimator, he means one who cruises and estimates timber for a living. He actually cruised himself, and was engaged in that business in Minnesota, and surveying. He had charge of surveys, but had to appraise the amount of timber on the Indian lands and the quality of soil for the purpose of selling, and has followed that occupation for a living ever since. The President of the Commercial Abstract Company is DeWitt Van Ostrand, of Phillips, Wisconsin, who is also President of the Neenah-Oregon Land Company, and has a half interest in the Commercial Abstract Company. The Commercial Abstract Company is not interested in the lands. He worked in the office looking up records and titles to what lands they got. His duties in the office are nothing at all, excepting two years ago this winter, in bad weather, he went into the office of the Commercial Abstract Company and his salary went on. He has done very little work for the large lumber companies interested in that vicinity in

Douglas County, aside from the Neenah-Oregon Land Company, for which he worked steadily for four years, with a few exceptions. His testimony and his knowledge of this grant is confined to Douglas County. They bought in 35—7 in Josephine County, about one thousand acres, and he has worked quite a little along Rogue River. His specific knowledge is practically all in Douglas County. He knows very little with reference to other lands, and he does not want it understood that his testimony goes further than the limits of Douglas County. He would not testify to anything he did not know personally. Less than one per cent of these lands are agricultural in character in Douglas County, in his opinion, until the timber is removed. He would not include grazing as an agricultural pursuit in the timbered lands, because almost all the green places shown on this map might be classified as grazing lands. There is good grazing land on a good deal of it for a month or two in the early fall and before it dries up in the spring, those rocky ridges. When he makes his estimate on each and every forty, he figures the amount of tillable land on it. His estimate would read something like this: So many acres in cultivation, cleared; so many acres susceptible of cultivation when the timber is removed; so many acres grazing; so much rough and rock and barren. He has a homestead in Section 18, Township 28 South, 3 West. Part of it is agricultural land, what he has cleared, about twenty or twenty-five acres now. He took that up for the purpose of making a home, and he has a home.

Q. Now, Mr. Gardner, referring to Defendants' Exhibit 312, I will ask you as to the lands in Township 28 South—4 West, what percentage of those lands is agricultural?

A. Section 1 is on the divide, on the head of North Myrtle Creek. Along the creek, along the main creek, which is heavily covered with timber, there would be a strip of land when the timber is cut which would be agricultural in character, in the Southwest quarter of the section. Section 3 has some land on it which is agricultural, probably fourteen or fifteen acres. I know very little about Section 5; 7 is on the divide, and has quite a little grazing land on it, very little of it tillable. Section 17 is all rough, steep and mountainous. Section 15 is all very steep, with the exception of some mining land, or land that they attempt to call mining land—illegal mining locations—in the southeast quarter the bottom land is all washed out through placer digging there along the creek. Section 13 has quite a bottom of Myrtle Creek, but the remaining land, with the exception of the north half of the southeast quarter, which is along by the fork and good bottom, is all rough and mountainous. Section 21 is all mountainous, with the exception of a small piece on Lee's Creek. Section 19 is nearly all—all the land on that that is left is quite mountainous, but there is a bench in the northwest quarter that will probably have, when the timber is cut, some very good land on it—the north slope of the bench. Section 29, that is all mountainous, the remaining land. Section 27, the west half of 27 is that west of the creek,

west of Myrtle Creek, which goes through in a northeasterly and southwesterly direction. That west of the creek is a gentle slope; that east of the creek is very rough. 31 is all mountainous, practically. 33, there is no agricultural land in 33 at all. 35 is on the crest of the divide between North and South Myrtle Creek. There is very little land on that any use. 23 is covered with mining locations, practically all of it. 25 slopes into Riser Creek, it is quite steep. That is all.

Whereupon witness testified that in that specific township, at the present time, very little of it is agricultural, probably 25 per cent of that township is agricultural when the timber is removed. It is all grazed at times with sheep and cattle, certain times of the year; this year for six weeks from about the first of June until about the middle of August. In the middle of July they take the sheep out. The feed is not good in August. There are probably one thousand acres of the unsold lands of the Oregon and California Railroad Company in this township that are good grazing lands. There is a very little of it that could be plowed at the present time, probably forty acres. 29 South is alll grazed at times, everything in the country. The whole country is grazed, but it is not what you might call grazing land. It would take probably an average of 160 acres, more or less, to support a cow. There is some burned over land; there is no bunch grass. Bunch grass is about the only thing they can fatten on in that township; but cattle do well along the creeks in the heat of summer. Practically all of the land in that township has

been taken, either commuted or homesteaded. Of the unsold lands of the Oregon and California Railroad Company in Township 29—3, probably 25 per cent, after the timber is removed, is agricultural land. At the present time there is very little. When the timber is removed, he would say not over 20 per cent is agricultural. He would not say that all of it is good for grazing, but they graze over it all; but there is very little grazing except on the burned ridges. There will be a burned ridge running through it, that would have fair grass or pea-vine. In the mountains they do not graze on grass much, but mostly on pea-vine, which is only good from the time it gets its growth, gets some substance to it, till the middle of July, when it dries up and is not good. It is a pretty hard question for anybody to answer, what percentage of this land is grazing land when the timber is removed, that is, it would take a lot of time, and it would be a guess for him. He would say that the top of all the ridges which would have pea-vine on for a month in the year, when the cattle and horses could support on that, would be grazing land, but he could not state the percentage, but it would be just a guess. The township grazes, with what they use in the bottom—there is only one man who is extensively in the cattle business, that is Lloyd Ade, in section 21, 16—28, and he runs, with what feed he has in the bottom, about 100 to 150 head of cattle, and he is able to graze them in the summer, and that is about all the grazing that is being done in that township now. He said that with his stock the range was pretty well stocked. When the land is cleared, if

it should be seeded down in the ashes, in that township, it probably would be 25 per cent grazing in addition to the 20 per cent of agricultural. Probably one-half of it could be used for grazing when it is cleared and seeded. Very little of the unsold lands of the Oregon and California Railroad Company in that township is agricultural in its present condition, none that he knows of in township 29—3. Probably five or ten per cent along the ridges in township 29—4 would be grazing, but the timber lands are all grazed at certain times of the year, not to exceed five per cent on the burned ridges, in their present condition. All of it is not grazing lands. That is, nobody can answer that. In Roseburg he told Mr. Underwood that one could use that land only for a very limited time; that one could run cattle; the great proportion of it could be grazed, but it would support stock for just a few days in the year. In the present condition, probably 50 per cent of that land could be grazed for only a few days in the year. It is an awfully hard proposition to fix what percentage would be grazing, unless one will fix some basis. The Government fixes the basis for that in the forest reserve. In the township referred to, there is not over 250 head of cattle on the odd and even sections, and the range is overstocked. There is very little land in Township 29—4, probably one thousand acres that are chiefly valuable for grazing purposes. After the land is cleared and seeded there would probably be 2500 or 3000 acres. After the land is cleared very little within 29—4 would be agricultural land, and of the unsold lands of the company probably

ten per cent in that township would be agricultural. There are 225 head of cattle grazed in township 30—1 south in the National Forest Reserve during the summer season, and the range is pretty well stocked. There would be about twenty acres in Section 21, in its present state, that would be agricultural. There would be about one-twentieth of one per cent of the thirteen sections in that township that would be agricultural, and about twelve and a half per cent of the unsold Oregon and California Railroad Company lands, probably one thousand acres, in that township, in the National Forest, as grazing land at the present time, and after the timber is removed, or the land is cleared, there will be fifty or sixty per cent of that township that will be grazing, but it is covered with a very heavy stand of timber. About twenty-five per cent of the land would be agricultural land. At the present time, with the exception of an old orchard and old buildings in the northeast quarter of section 23, there is no agricultural land in the unsold portion of township 30 south, 2 west. There are about fourteen or fifteen acres of agricultural land in the Northeast quarter of section 23, which would make one-thirtieth of one per cent of that unsold land in that township agricultural. It is all grazed. There are about seventy-five head of cattle running in there now. Probably ten or fifteen per cent of it would be grazing land in the present condition, and when cleared, probably twenty-five or thirty per cent of good grazing and agricultural land; probably twenty per cent agricultural, and probably 15 or 20 per cent would be grazing land, when

it is cleared and seeded and burned. Probably one-tenth of one per cent is agricultural in township 30 south, 3 west, there is just a little patch there, grazing, south of the river, that is, one-tenth of one per cent in the entire township would be agricultural, and twenty-five or thirty, maybe forty per cent in that township, possibly, of grazing land, when the timber is removed. There is a little patch there of agricultural land in the present state, which could be farmed, and when the timber is removed, there will be a probably fifteen or twenty per cent in that township which would be agricultural land, and after the timber is removed probably an additional twenty or twenty-five per cent, maybe more, in that township, would be grazing land. It is a pretty fair township. There is only a small fraction in Section 23, Township 30 South, Range 4 West that is cultivatable at the present time, in the entire township, probably one-tenth of one per cent, and probably ten or fifteen per cent grazing land in the present state. After the timber is removed there may be probably ten or fifteen per cent on the benches that would be agricultural. Practically all the good agricultural land in that township has been taken. There would probably be an additional ten or fifteen or twenty per cent after it is seeded, that would be grazing. In 30 south, 5 west, there are a few little places that are cleared. He thinks most of them are under contract at the present time, and probably five or ten per cent grazing, burned over. Practically all this township when cleared could be grazed. There is very little agricultural land remain-

ing. It is all contracted or sold in that township. Probably five per cent of the remaining would be agricultural, and the balance, probably forty or fifty per cent, would be grazing land. Probably forty acres in Township 31 south, 1 west, is agricultural at the present time —referring to the unsold lands of the company—and probably twenty per cent is good grazing at the present time. About one-fifteenth of one per cent of the unsold lands in that township, would be agricultural; probably fifteen or twenty per cent at the present time grazing. After the timber is removed twenty per cent could be plowed; probably half of it would be grazing land; probably seventy-five per cent of that land would be grazing land. All agricultural lands can be grazed too. He makes these estimates off-hand, from his practical knowledge of it. There are about twenty-five acres in Section 1, Township 31 south, 2 west, which is all the agricultural land there is at the present time, amounting to one-fourth of one per cent, and twenty per cent of grazing land. There is a good deal of burn in that township. Probably five per cent of this township when cleared, would be agricultural in character, and fifty per cent grazing if seeded. 31—3 south, with the exception of a little on Cow Creek, is all timbered and mountainous on the divide. Only two homesteaders went into that. None of the unsold lands of the company in that township are agricultural at the present time. Twenty-five per cent would be grazing. Probably ten per cent would be agricultural, and twenty-five per cent, maybe thirty per cent, grazing, when the land is cleared. About one-

twelfth of one per cent of the land in Township 31—4 South, in its present state, would be agricultural, and twenty per cent grazing; and when cleared, five per cent agricultural and thirty or thirty-five per cent grazing. There is no agricultural land in the unsold lands in Township 31 South, 5 West, and very little grazing; he would say about five per cent. This township is all heavily timbered and steep slopes. but most of it, the southwest part of the township, all the railroad land and the other, has been bought by the Duluth Timber Company. He is basing his estimate on these unsold lands of the O. & C. Company, shown by Defendants' Exhibit 312, and is not including the lands of the Duluth Timber Company or any other timber company, in making his estimate. After the timber has been removed from that township, one per cent will be agricultural, and five per cent grazing. There is no agricultural land—no one living in township 32 south, 1 west, except one person in section five. There are ten acres in Section 5, in lot 2, that are agricultural in character, and that is the only agricultural land in that township. One-twentieth of one per cent would be agricultural, and five per cent grazing. It runs from 65,000 to 70,000 feet per acre. After the timber is removed there would be very little agricultural land there; probably one hundred acres in the township, or two per cent of it. On top of these divides there would be a section or two of grazing land, probably ten per cent. Township 32 south, Range 2 west, has just been surveyed. There is no one living in that township except three settlers. This township is outside of

the definite limits and has never been patented to the company. He is well acquainted with these lands in that township. The company never had any lands to sell in that township. It is outside of the map of definite location. All of these townships mentioned in his testimony are west of the Willamette Meridian. In township 32 south, range 3 west, one-tenth of one per cent of these unsold lands are agricultural in character, and twenty or twenty-five per cent grazing, and after timber is removed, twenty-five per cent could probably be tilled and probably an additional twenty-five per cent grazing. The company owns no agricultural land in township 27 south, 3 west. Probably twenty to twenty-five per cent of that land in that township is grazing in its present condition; probably ten per cent would be agricultural when the land is cleared, and fifteen per cent additional would be grazing. Of the patented lands of the company in township 28 south, range 3 west, there are no agricultural or grazing lands on either of the two quarter sections. They are both in the forest reserve. The rest of it is all settled on. This exhibit shows nothing but 320 acres of unsold railroad land in that township. He is acquainted with all of the lands of the O. & C., excepting in the Forest Reserve. His acquaintance has been from cruising the even sections. He has cruised all the even sections in these townships and going onto the O. & C. lands and crossing them in cruising the even sections. The two quarter sections shown on this exhibit are both very rough, rocky and mountainous and are heavily covered with a dense stand of timber. The north-

west quarter of section 19, and the southwest quarter of section 31, in Douglas County, described in the complaint, are both covered with a heavy stand of timber, and are of very little use for anything except timber value. There is no agricultural land, and probably ten per cent of these lands would be, for a certain time of the year, grazing. There are a couple of pea-vine ridges through there. About 20 acres in township 26 south, range 2 west, is agricultural in character at the present time. In section 7, along the North Umpqua River, there are about twenty acres covered with an application, he thinks the records show, that was in cultivation. Probably twelve per cent of the 8000 acres grazing. The south half of that township is covered with a stand of timber that will run 100,000 feet to the acre, 7,000,000 to a forty. There is a good deal of those benches—that is a very peculiar township, built just like a ladder, the lands jump up about 1000 feet and then there is a bench, and then jump up another 1000 feet, then 3000 feet from the North Umpqua river. These benches are covered with a heavy stand of timber—very good land; they are north slope benches. Probably twenty per cent of that land could be plowed after the timber is removed, and probably an additional twenty per cent would be grazing. In township 28 south, range 3 west, he has testified that none of the unsold lands would be agricultural. He has never cruised the south half of that township, which is in the Forest Reserve. He has not testified in regard to the south half, he never cruised it and could not testify to that. He has been through the south half of

the township probably a dozen times, through the trails —White Rock and other trails. He lives in that part of the township, and aside from along Buck Fork and one or two of the creeks, it is quite heavily covered with a dense stand of timber, and probably not over ten per cent would be agricultural when the timber is removed. His homestead is Lots 1 and 2, the east half of the northwest quarter, section 18, township 28 south, range 3 west, Willamette Meridian, Oregon. There are only 320 acres in that township among the unsold lands of the company. They are all rough, rocky, mountainous—that is, the 320 acres. He would estimate none of it as agricultural. Ten per cent would be grazing; there are two ridges that run through it that would be fairly good grazing.

Q. Mr. Gardner, there is no difference between the lands in the even numbered sections and the odd numbered sections in thse townships that you have just previously testified to, is there? That is, Township 30 South —2 West; 30 South—3 West; 30 South—4 West; 30 South—5 West; 31 South—1 West; 31 South—2 West; 31 South—3 West; 31 South—4 West; 31 South—5 West; 32 South—1 West; 32 South—3 West; 27 South —3 West; 26 South—2 West; and 28 South—3 West?

A. Yes.

Q. What makes that distinction?

A. The clearing and settling on the even sections inside of the definite limits, by homesteaders and people that commuted, which—

Q. I know, but— excuse me for interrupting.

A. That is practically the difference, generally speaking. The land originally, there was very little difference.

Q. The land in its natural state was the same?

A. Practically the same, yes, sir.

Q. Now, isn't it a fact, Mr. Gardner, that if these lands in the township just previously mentioned were divided into 160 acre tracts by legal subdivisions, but not by quarter sections, isn't it a fact that the percentage of agricultural land would run from one to two-thirds of the lands situated in these townships?

A. Well, it would, in so far as anything suscepitible of being grazing at all. I will state for the benefit of the court, that the affidavit that you are referring to— they wanted me as a witness—stated that the land, if it is cut and seeded, would be good for agriculture. That is what I stated to Underwood. I don't know whether it is in the affidavit or not. And I stated it would be capable—anything you can run anything through, anything that has a spear of grass on it—you can run it through all of it, I said, except the rocky parts.

Q. Isn't it a fact that one-third would be agricultural lands and about two-thirds grazing lands of these townships that I have mentioned?

A. No. No, that would be the whole of it. One-third and two-thirds make a whole. It would not be that.

Q. You remember of having a conversation with Leonard Underwood, Special Agent of the General Land Office, on the 15th day of March, 1912, with reference to this land?

A. Yes, sir, I did.

Q. And at that time you made an affidavit before Mr. Underwood with reference to some of these lands?

A. I made a statement to him, yes.

Q. I will ask you to examine this document, and state whether or not that is the statement that you signed, or affidavit?

A. Yes, it is.

Q. In this affidavit, among other things, you state (referring to the affidavit): "That he (meaning you) is familiar with, and has been over repeatedly the South Umpqua country, being township 28 S., R. 4 W.; Twp. 29 S., Ranges 1, 3 and 4, W.; Township 30 S., Ranges 1, 2, 3, 4 and 5, W.; Township 31 S., Ranges 1, 2, 3, 4, and part of 5 W.; that part of Township 32 S., Ranges 1, 2 and 3 W., north of the Rogue River Divide in Douglas County. That from his knowledge of said area it is his judgment that one-third of same is agricultural in character, and the balance largely grazing land." Isn't that statement contained in that affidavit?

A. Sure that statement is. The affidavit speaks for itself.

A. The best evidence, I should think.

Q. In this statement do you not also state, "There

are now thousands of cattle and sheep annually grazing on same"—referring to the lands just previously mentioned?

A. I will state that that is the whole lands in there, that is including the odd and even sections; and the even sections, a great deal of it along the river, has all been farmed; and I told Mr. Underwood of it specifically, and said, why, certainly there is that many. There are several people run sheep there. They take them up while the pea-vine is green. This year they have had them there five or six weeks, then there was no more feed. They run sheep through there at certain seasons. He said that it didn't make any difference, if the land was agricultural, whether it was covered with a dense growth of timber, he said the land was of an agricultural character no matter how much timber there was on it; and he said that anything that cattle could run over at all was grazing land. Well, then, I said it is all that, because cattle runs all over it.

Q. Referring to the affidavit again, Mr. Gardner, you also stated in this affidavit, did you not, "That he (referring to yourself) is also familiar with and has repeatedly been over part of the North Umpqua country, being Twp. 27 S. Range 3 W; part of Township 28 S. Range 3 West; part of Township 28 S. Range 2 West; Township 26 S. Range 2 West in part. That the above area, in affiant's judgment, would run one-third agricultural land and two-thirds, or the larger part of two-thirds, grazing land"?

A. Yes.

Q. That statement is contained in the affidavit, isn't it?

A. Yes.

A. It does.

Q. Referring again to the affidavit, this affidavit states, does it not, "That affiant believes if said areas above described were subdivided into 160 acre tracts, the same percentage would obtain on an average per 160 acre tract?

A. Yes, sir.

Whereupon complainant offered the affidavit referred to in evidence as Government's Exhibit 117, to which defendants objected as incompetent, immaterial and irrelevant, and upon the further ground that the definitions of grazing and agricultural were given to the witness by the special inspector, Mr. Underwood, and the answer shows that it was the answer of the special inspector and not of the witness, excepting in those general terms. Which said exhibit was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified as Government's Exhibit 117.

Whereupon witness testified that the lands that he had in his homestead, in section 18, township 28 south, range 3 west, are timbered lands, and in a general way are the same general character of land as lands in these townships mentioned as to the timber, but he picked out

the only piece in there, that has less timber than there is on either side of him, so that he could clear it. It is in the range running through the Oregon and California, but is not of the same general stand of timber; it contains the same Douglas fir and incense cedar and the same sort of timber as the other lands. He took this homestead up to make a home for himself, for settlement purposes. His acquaintance is principally with the southern part of this grant. He is not so familiar with the northern part, only from occasional trips to look over an individual claim.

Whereupon, on re-direct examination, witness testified that what he saw of the northern portion is on the Calapooia and in the Rock Creek country and on the north Umpqua, and it is heavily timbered and rougher than his part of the country.

Q. Now, referring to this Government's Exhibit 117, who was Mr. Leonard Underwood?

A. Why, Mr. Leonard Underwood was special agent of the General Land Office. He was down there procuring evidence, I guess, for the Oregon and California Railroad suit.

Q. That is, for this suit, on behalf of the Government?

A. He told me that he would want me up here as a witness, and I told him that the land cleared, agricultural land, was very limited in all of it. He said any land which was fairly level, or could be farmed after

the timber was removed, was agricultural land.

Q. In other words, he gave you a definition of what he claimed agricultural land was?

A. Yes, sir.

Q. And he gave you a definition of what was grazing land? What did he tell you?

A. He did, in so far as I told him the sheep came up in there for a certain time of the year every year, and cattle did, all over the grant.

Q. Didn't he tell you that grazing land was any land that sheep or cattle could run over at all and feed on?

Objected to as leading.

A. Well, now, I couldn't state, Mr. Fenton, that he told me that. He said anything that you have ever seen cattle or sheep going over, but he didn't state it as broad as you did. He didn't tell me that.

Q. If he defined grazing land as anything that you have seen cattle go over or sheep go over, that would be his definition of grazing land, as you understood it in this affidavit?

A. Yes, sir.

Whereupon witness testified that the cattle that grazed over the lands of the South Umpqua country are owned by Ben Nichols, of Riddle, and Hi Acker, of Acker's Butte. He is out there in township 29 south, range 1 east. He runs about 65 or 70 head of cattle in

that township. Further east, Wright Brothers and Thompson have about 75 or 100 head of cattle, which they run over that whole country, and by what was known as the Short Ranch, now owned by two parties who have bought it, whose names he does not know. They run a couple of hundred head—they range over probably five or six townships. Most of these lands over which they range is deeded. They took these lands when they went in there; in township 31 south, range 1 west, all of section 15, half of 16, 9 and 4, and part of 3, were bought—all the open land was bought that they could run cattle on, and that is where they run most of their cattle.

Q. Is it or is it not true, if not, state exactly what the fact is, that the whole country is open wild country, in a state of nature, excepting here and there small tracts that may be enclosed along the creeks and streams, and that everybody's cattle in that whole country, local or otherwise, are during a certain season of the year, driven up there and allowed to roam at large over the pea-vine and such stuff as there may be in the woods and on the burns? State what the fact is.

A. They are.

Q. You may answer.

A. It is, yes, sir. The cattle are taken up into the forest reserve; but the local cattle, most of them, will follow the feed. In other words, they will work up in June and July up into the mountains, and when the pea-vine goes, then they work down, and in August

and September they will work on the creeks, where they can get lush feed and everything, and then after that they work down onto their patented lands.

Q. What character of vegetation is there on these railroad lands, upon which stock could graze and upon which they do graze at any time of the year or at such times of the year as they are there? What kind of feed is it?

A. Well, on the O. & C. lands inside of the grant, there is very little bunch grass. The majority of the time they live on the pea-vine.

Whereupon complainant objected to the foregoing questions as leading.

Whereupon witness testified that this grazing takes place from one to three months, from the time the pea-vine starts to get ripe in June, up to some time in August, and they follow the ridges and burns, and then get the pea-vine.

Q. Suppose an actual settler wanted to go in there and tender the company $2.50 an acre under the act of Congress, and claim to be a purchaser of 160 acres by legal subdvisions, what is the fact, if you know, as to whether that 160 acres would or would not afford pasturage of any kind for the support of any kind of stock, and if so, about how much stock, and for how long a time?

A. Well, I have on my place—speaking personally—I have four or five head of stock, and they eat about all that I can get.

Q. Yours is a very good place, down on the bottom in part?

A. Mine is on the creek bottom mostly.

Q. But I am speaking now of 160 acres applied for by some actual settler, under this so-called act of April 10, 1869, to buy it at $2.50 an acre and make a home on it.

A. There isn't a place, not one place on that grant, that a person could go on and make a living, of the unsold lands.

Q. Why couldn't he use it for pasturage and get rich?

A. Well, on account of the underbrush or salal and other stuff that they don't eat, or eat very seldom.

Q. Now, isn't it true that, if he was the only actual settler in the whole township and had the balance of the lands to pasture on, he might pasture it for two or three months in connection with the rest of the grant? Isn't that true?

A. One might. He might run a small bunch of cattle.

Q. Now, if the Oregon and California Railroad Company lands were open to settlement, 160 acres to each, could four settlers occupying each section make a living for themselves or their families, either by using the land for agricultural purposes or for grazing purposes?

A. No, sir.

Whereupon witness testified that Nichols, who owns some of this cattle, lives at Riddle, about thirty-five miles from where he runs his cattle. He drives them every year into that country—the range has gone this year, and this is about the last week for the sheep to return. They were turned out on the range some of them, this spring, and some of them wander up in the forest reserve. The only persons in the sheep business are Donovan Brothers, or James Donovan, at Myrtle Creek, who runs from 900 to 1500 head of sheep for a short time in the summer. He drives them up and takes them out. His first camp is eleven miles from Myrtle Creek; the last about thirteen miles. The sheep live there mostly on the poison oak, and grass browse, and pea-vine, mostly on pea-vine. They eat poison oak like a horse, and they like it. A horse will eat it more than anything else, that is, horse, sheep and cattle. They take the sheep up into these mountains and woods as soon as they can, in the spring after lambing, and they have taken them out this year already. They are up there about two months. They have a shepherd with them, one or two men, and dogs, and hold them in there. As soon as they start to shrink, and as soon as the pasture gets so it cannot support the sheep, they take them out. It would take four or five years for anybody to go in three and get any place in such shape that he could keep fifty or seventy-five head of sheep. They would be able to do that by slashing, burning, and sowing grass seed in the burns. On burned over land, or when land would be cut, after the timber was cut and the slashing

was burned, one can sow in the ashes in the fall, and get a very good stand of Italian rye, or orchard grass, or in the low swales, timothy, which will make very good pasture. Grasses would grow in patches on the land that he thinks could not be cleared and used for grazing purposes; that which would not be practical to clear; could be grazed all right that way. Grasses on that class of land, growing among the stumps, roots and trees, if one did not overstock it, could be grazed almost the whole year. It would be impracticable to take a quarter section of land as an actual settler, slash it all off and graze it, and be able to make a living with stock, because the cost of merely burning and slashing would be so much greater than he could buy open land for elsewhere, that it would not be practical. The chief value of this grant, from his standpoint and in his judgment, is for its timber possibilities.

Q. Did Mr. Underwood tell you what he wanted this statement, Government's Exhibit 117, for?

A. He told me that it was for the general character of all the land in those townships. He didn't mention the railroad grant.

Q. Was this written out by you or by him?

A. Written out by him.

Q. And how long were you in conversation with him?

A. Probably fifteen or twenty minutes at that time, about thirty minutes, maybe.

Q. And the definitions of agricultural land and of grazing land were discussed by you and him under the terms as stated by you?

A. Yes, sir. It should have been in there.

Whereupon, on recross examination, witness testified that this land in the grant is not of the same general character as his homestead. He spent a year looking around, practically, when he came here, before he could find a piece that he could homestead. It has mountains on both sides of it. It is not of the same general character and not the same mountain range. The highest point is 241 feet from the lowest point on his place. He has between twenty and twenty-five acres of cleared land. The homestead has cost him very nearly $4,000 to get in the shape it is in now, with his buildings. He is not connected with the Commercial Abstract Company, but testified that Mr. Van Ostrand, who is the president of the Neenah-Oregon Land Company, owns a half interest in the Commercial Abstract Company, and witness worked one winter, as he was drawing his salary from Van Ostrand; he worked a year last winter for the company in the office. J. D. Zurcher, who testified in this suit is manager of the Commercial Abstract Company.

Whereupon WILLIS VIDITO, being called as a witness on behalf of the defendants, and being duly sworn, testified, that he is sixty-eight years old, is living in Corvallis, Benton County, Oregon, at present, and has lived thirty-seven years in Township 14 South, Range

8 West in Alsea Valley. Until about nine or ten years ago he farmed and carried mail; he ran several mail routes in the Coast Range in years past; one eleven years, another sixteen years, and another three years, he thinks. He was assessor of Benton and Lincoln Counties forty-two and forty-four years ago, and was Justice of the Peace in Alsea Precinct, he thinks, about fifteen years. Alsea Valley, or Precinct, is now in Benton County. He is acquainted with a good portion of the unsold lands of the Oregon and California Railroad Company in Benton County, Oregon, and has lived in the vicinity of these lands for forty years, and handled all the chittam bark for the Oregon and California Railroad Company ten years ago. He is not working for that company at present and has not been this year. He was fire warden for that company in that range, he thinks, for about nine years. The company paid him and he looked after all fires in all that country; and thinks there was about 75,000 or 80,000 acres mapped out to him that he looked after during that time. In his younger days he hunted a good deal over these unsold lands and leased these lands for the company on shares two different years, for a per cent of the chittam bark, not less than one-third, or whatever he could get. There are various kinds of timber on these lands. To which testimony complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be deemed taken to all the testimony of this witness, relating to the character of the lands within the limits of this grant, settlements thereon and public

land entries thereof. Whereupon witness testified that the timber on all the high lands is nearly all common red fir, some Noble fir, and the lower lands along the creek bottoms, is alder, cedar, maple, vine maple, cascara and various other kinds of brush and small timber. This chittam bark is the cascara sagrada. There have been great quantities of that, but it has been pealed for some thirty odd years and there is very little of it left. The chief value of these unsold lands in Benton County would be timber, nearly the total value. There are many parts of this land that is burned land, that has nothing on but fern, that comes annually. Every two or three years, fire gets in and burns off hundreds, sometimes thousands of acres. No one ever took any trouble to seed it, and consequently there is nothing on the land of any value. The only thing that the soil of this burned over land could be used for would be when it burns over sometimes to sow it to grass, that you might get some benefit out of it in the way of range. The low lands of this burned land might be used in this way for range if one could get seed on it, but he has never heard of any one sowing any seed on this burn. He has insisted that it be done, that the people over there pool together and buy seed and sow these lands in order to have range.

"Q. Now, suppose that an actual settler, under this so-called claim of the Government that the company is under obligation to sell to actual settlers at the rate of not to exceed $2.50 an acre and in quantities not exceeding 160 acres, should take a quarter section, or apply for it and the company should let them have a quarter

section of this burned over lands upon which to settle and make a home, how would that man make a living on that piece of land?

A. There is none in Township 6, 7 nor 8 West and 13 South, 6, 7 nor 8 west, in 14 South, that anybody could make a living on, either Government land or railroad land.

Q. Why?

A. Well, it isn't of a nature that they could do anything with that quantity of. I took a claim in 1872, and I couldn't make a living on that, and it was the best, I think, that was available at that time, nearly forty years ago."

Whereupon witness testified that near the divide of the Coast Range, the timber is usually pretty heavy and has very few open spaces. Further west near the line of the company's grant, is less timber, a good deal of second growth, and where second growth timber now is about the right size for piling, but not old enough, there is absolutely nothing grows. He knows of one claim that the company sold before the lands were withdrawn by the Government, that would be a very good claim for agricultural purposes. Various parties have spoken to him about that claim at different times when he was in the employ of the company. They wanted to locate on it and he thinks that the company leased that land to get twenty tons of chittam off it after a good part of it had been sold. There is some good bottom land on it. It is situated in Section 7, Township 14 South, Range

8 West. He never figured on any per cent of the lands in Benton County that could be used for agricultural purposes or for any useful purpose other than for timber. There would be a very small portion of it that could be utilized for such purposes. There are thousands of acres of this land that do not have any undergrowth or pea-vine on. There is Oregon grape and salal brush growing on high ridges and some north hills of the low lands, but the only available substance for grazing would be these native running briars, which cattle live on when they range over it. Cattle could graze on the high lands during June, July and August. On the low lands they could run over it, and do, the year around. There is lots of these lands now in Township 13 South, Range 7 West, and there is not a living man on that whole township. In Range 13 South, 8 West there are no inhabitants in that township, either on the even or odd sections. The reason for that is, no one is fool enough to think that he could make a living on it. There was one claim taken in that township, which a man lived on, but he sold out to another fellow, who raises a garden there. There has been some logging done on it, but he don't live on it. There is not an inhabitant living in that township. These lands could not be used to any extent for pasturage purposes at all, in the present condition of the land. There are many benches in the lands of the company and on the even sections which, if cleared, would raise grass and might raise garden and fruit, but the expense of clearing would not justify any man to take them up, with the understanding that he would ever clear them

up. He has never had any experience or knowledge as to the cost of clearing these timber lands, this heavy timber land, in Western Oregon. He has had a few acres grubbed out of these creek bottoms, in maple and ash timber, which cost him about $80 an acre to clear up, which had never been slashed. There were standing trees here and there in the bottom land along the creek, not this big fir timber. He never heard of anybody trying to clear it by burning up the stumps or logs. It does not seen to him that any one would take chances on getting the odd or even sections of these heavy timbered lands, covered with merchantable timber and undertake to clear them. He finds that in southern Benton County, there is a good deal of land that is very rocky, close to the surface—no rocks in sight. He prospected for some mineral and found that the land is decomposed sand, rock, and wherever a tree grows and turns up, it throws up a lot of bed rock on much of that land. The land, if blown out, or where it is on low, wet land, the roots grow very shallow, and lay all on top of the ground, and those roots could be exterminated, and there is an awful lot of them, but on higher land the roots go deeper, the higher the land the deeper they go, and most of it is rocky under the surface. His knowledge of the root and soil character of this grant is confined chiefly to Benton and Lincoln Counties. He knows where the company's lines are, in Lincoln County and is acquainted with the unsold lands of the company in Townships 12 and 13 South, Range 8 West, and Townships 13, 14 and 15 South, Range 9 West. He became acquainted with

these lands and their character by looking after fires over various parts of the grant for the last ten years, by leasing out those lands for chittam, and has run lines dividing up sections, and hunted up the stakes, and knows all about it. Opposite 13 and 14 South, in Lincoln County, the company's grant only runs about a mile into that county, and there is but very little timber on the company's lands. It is second growth, what there is. Section 30, Township 14 South, has a good body of heavy old timber on it; but that is the only section along the line there of the company's grant in Lincoln County that has any timber on in 13 or 14 South. There is a little timber on section 30, in 13 South, that is good timber. Where the character of the land has no merchantable timber on it at present, there is an undergrowth of fern, salal, vine maple and cherry, and all that kind of thing. On Section 21, 13 South, the elevation is 3,700 feet. There is some pretty fair soil on that summit. It is grass land; and also in 15 South, there is a mountain range there that contains some prairie grass on it. He does not know of any of the unsold land in Lincoln County that would be valuable for agricultural purposes.

"Q. What per cent would be available for pasturage purposes, to a man who would go there and settle, and take 160 acres?

A. Oh, it would be worth something to him, because, as I say, the cattle runs all over that country. It makes no difference what the distance, nor how high it

is. They pick out salmon berry leaves on the creek bottoms, and salal, and fern, and running briers, but the briers, on the most of that country, is the only pasture there is. There is no grass—no native grass.

Q. I mean, suppose a settler would go in there and buy 160 acres, take a homestead of 160 acres, expecting to make it his home, and be confined to that piece of land to make his living, either by pasturing stock or any useful avocation relating to agriculture or horticulture, how would he get along?

A. He would be caught.

Q. He wouldn't, then, be able to make a living on the place at all?

A. No, he couldn't make a living for a family on a piece of land, unless he had money to squander and live on.

Q. I mean out of the land?

A. No, he couldn't make it out of the land. I never have advised anybody, in years past, not in the last ten or fifteen years, to ever take a homestead. I knew where there was vacant Government land, but I couldn't recommend anybody to take it.

Whereupon witness testified, that he knows of part of the even sections within the limits of this grant, where the land is chiefly valuable for timber, which had been taken under the Timber and Stone Act, and thinks that most of it was taken for this cascara bark, and after they peeled the bark off they threw the claim up, and all

that Government land was filed on along the line between Lincoln and Benton, about eight or nine years ago, and he does not think that there is any one of them living on those claims today. They were just simply vacated. He thinks only one man perfected his title. There is no one living on these homesteads taken in the last twelve or fifteen years. The homesteads were sold to timber syndicates. Some of them had cleared up five or six, or ten acres, that is, they had cut off the timber and sowed grass, and burned up part of the logs; they had timber enough on their claims, so they sold out for a good figure, and just simply left, vacated, and the timber owners own it now. Nearly the entire value of the unsold lands of the company in Lincoln and Benton Counties, consists in its timber. Whereupon on cross examination, witness testified, that he has been during the last fifteen or twenty years employed considerable in connection with these lands; during the summer time as fire warden, and during the summer season for two or three months by the Oregon and California Railroad Company. The company never tried to do anything with that chittam bark for the past eight years, he thinks. He looked after it while he was in the office, during the summer season, and tried to see that none of it was stolen off the lands; but the company never ordered him to lease out any of it, or make anything out of it. He was employed as fire warden in the summer time up to a year ago; and patrolled for the Government this season. He was fire warden, commissioned by the State Board of Forestry to patrol in the

North part of Benton County this season; that is, fire guards that the appropriation provides shall be expended by the State for fire protection. He ran a good many lines of these sections, most of them in the western part along the line between Lincoln and Benton Counties. He would sell a forty to a party for the company for chittam, and another forty or half section of the same section to somebody else, and he had to run a mile through the section, and pace it out, and give them their territory to work on. The Oregon and California Railroad Company showed these lands to him in Township 13 South, Ranges 6, 7, 8 and 9 West; and Township 14 South, Ranges 6, 7, 8, and 9 West, and the county line is a mile and a third south in 15 South. The maps the company furnished him in later years only authorized him to go to the county line, which was the south line of 15 South, and as far as the grant went west. Those are the lands that he has been more thoroughly over than others. He has just a general knowledge of the other lands. He is better acquainted with the western part than he is along the divide. There is no chittam bark on that divide, and when he was interested in working on those lines, it was the western part, along the line of Lincoln and Benton Counties. He has worked as fire warden on all of these lands in Benton County, he thinks, that is, there hasn't been fire on all of them, but he has been over all of them during that time. That is true, also, as to the grant in Lincoln County, it only runs about a mile along there. Whereupon on re-direct examination, witness testified that he thinks he has gone

over the lands, within the limits of the grant, in both of these counties sufficiently to enable him to tell whether they are timber, agricultural or grazing lands.

Whereupon DENNIS McCARTHY called as a witness on behalf of defendants and being duly sworn, testified that he is forty-six years old, resides at Marshfield, Oregon, and is a timber cruiser and that he has resided in Marshfield, Coos County, Oregon, eight years and has been cruising timber most of the time. He was in the employ of the Simpson Lumber Company when he did the first cruising in the county. He cruised for outside companies that bought timber there and the last four years he has been in the employ of the county. For timber companies, his duties were principally estimating the amount of timber on certain tracts of land and in cruising for the county, his duties were estimating the timber, classifying the land as to its soil and whether it was adapted to grazing or cultivation, etc. He also ascertained whether the land was chiefly valuable for timber. In cruising, one starts in, at the corner of the section or whatever the land is, he is working on and runs through the land. It is according to whether it is heavily or sparsely timbered. They aim to go through the timber so as they can see the whole of the timber or whether or not the land is all timbered or not and either count the trees or average it up by the acre. Where the timber stand is uniform they generaly average it up by the acre, count the number of acres on a certain tract and average up the balance, if it is uniformly timbered. In cruising for timber companies, who are either appli-

cants to purchase or wish to know the contents of their timber holdings, he uses the same methods of cruising. They ascertain the number of trees, by either counting all the timber or a certain number of acres and averaging the rest and then get the size of the trees by measurement. They generally measure down timber in order to get the size of the trees and then once in awhile the standing timber, the diameter of the stump and take that as a guide, take the down timber, giving it the same contents as they would a down tree of the same diameter. He did not use very much these volume tables. He generally used tables that he had made himself from actual measurement of timber that was down, or in logging camps where they were cutting and measuring up a certain number of trees and made a memorandum, kept a book for that purpose. He is familiar with and carries Spalding's and Doyle's rules and several of these tables and scales used by loggers and others. He understands how to triangle and obtain the heighth of trees but they never do that, they generally take the down timber and use that as a guide to the length of the trees. These methods are the most accurate that one can get, because they take actual measurement of the down timber in the same vicinity they are cruising. Timber investors buy or sell right along always on his cruises. The Simpson Lumber Company is a large corporation, has sawmills in Coos County and has been operating there for fifty years. The sawmill is at North Bend on Coos Bay. The Company has two mills, one has a capacity of about 100,000 feet a day of ten hours and the

other about 50,000 feet, he would think. There is only one more sawmill at North Bend manufacturing lumber —he believes California men own it now. It was built by some local men and he believes they sold out. It is only a small mill of about 50,000 capacity. He cruised all of the timber holdings of the Simpson Lumber Company about eight years ago. He believes that "Defendants' Exhibit 314" is a fairly good map of that section of the country. The red color on the map is the Simpson Lumber Company's lands and he is able to identify them in a general way from his actual knowledge of where these lands are on the ground. He recognizes them all. Most of these lands of the Simpson Lumber Company are steep mountain lands. The north of the map is in Douglas County. The lands in Douglas County in township 22 north, range 12 west, are all high steep mountain land. He does not know how many acres the Simpson Lumber Company owns in Douglas County. There are approximately 4,000 acres in that county, to all of which testimony complainant objected as incompetent, irrelevant and immaterial and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, the settlements thereon and public land entries thereof.

Whereupon witness testified that the Simpson Lumber Company owns about 24,000 acres in Coos County which are chiefly valuable for timber. He is acquainted with the C. A. Smith Lumber Company transacting

business in Marshfield, Oregon, where they have two large sawmills, one of the capacity of 300,000 feet board measure in ten hours and the other about 150,000 feet. He could not say accurately but the volume of lumber manufactured and shipped by the C. A. Smith Lumber Company from Marshfield, which comes from the timber on the water shed west of the Coast Range in Coos County, must be something over 100,000,000 feet a year—it is more than that, he does not know how much more it would be. He could not say how much money that company has invested in these mills and timber holdings in Coos County. It is a very large enterprise. He has been through the mills of the C. A. Smith Lumber Company and over a great deal of its timber lands. The bulk of the holdings of the C. A. Smith Lumber Company is in the southeastern part of the county and he thinks this company owns about 70,000 acres in Coos County. Some of these lands are within the limits of the Oregon and California railroad grant, heretofore purchased from the Oregon and California Railroad Company. The Simpson Lumber Company owns in Coos County about 24,000 acres. The Menasha Woodenware Company, of Menasha, Wisconsin, owns a large tract of timber formerly owned about 20,000 acres and has recently purchased another large tract there of about 70,000 acres and it has pretty close to 100,000 acres there all together. These timber lands of that company are mostly all mountain lands, principally fir timber which is the principal tree in Coos County and western Douglas County, with a little scattering hemlock and

cedar. Weyerhauser Timber Company is the next largest owner of timber lands in Coos County, owns about 25,000 acres in that county. He does not know the extent of its holdings in Douglas County. It has a large tract there. The holdings of the Weyerhauser Timber Company in Coos County are all heavily timbered mountain land. He has cruised part of the unsold lands of the Oregon and California Railroad Company in Coos County. He thinks they have cruised about 60,000 acres of them up to this time. His knowledge of the balance of these lands is just a general knowledge. He has been through the townships in which they are situated but has not cruised these townships yet. He has been sufficiently over them to be able to state, in a general way, the general character of the rest of these lands. So far as he has been through the unsold lands of the Oregon and California Railroad Company in Coos County, they are mostly high lands, heavily timbered lands, as far as he has seen them and he has actually cruised about 60,000 acres of them and these were all heavily timbered lands, and as to these that he has not specifically cruised but traveled through or over, they were chiefly timber and most all high mountain land. These unsold lands are nearly all steep mountain slopes, gulches and generally rough country. In their present state, he would not consider, that any of it would be available for agricultural or horticultural purposes and it is so heavily timbered that it would not be practical to clear the timber and cultivate it. It would not pay, he thinks, any part of it, to clear the heavy timber off

of it and cultivate it and their chief value is timber. There is a small portion of this acreage where, if the timber was cut and removed and the lands grubbed or the roots taken out, it would be plowed or tilled but whether it would produce anything to pay or not he could not say—there would probably be five per cent of it, the slopes would be easy enough or level enough to plow or till—there would probably be five per cent of that, after the timber was cleared off, that would be available for agriculture, providing it would produce crops. He does not know about that. These lands are generally about the highest elevation of any lands in the county, from 1500 up to 3000 feet, some more than that. In some places where this timber would be, that might be removed, the soil is fairly good clay soil, but the land is generally all rocky. The soil in some parts of it is very good—good clay soil, good clay loam. There is not any of it in its present state that he knows of that would be susceptible to grazing. If the timber was cut down and removed and the stumps cleared and grass was sown in the ashes, after the clearings were burned, there would probably be, perhaps fifty or sixty per cent of it that would be so as stock could range over it, if it would grow grass. He does not know as to that. What he means is, that it would not be so steep that stock could not go on, probably sixty per cent of it that stock could range over and feed on. Whereupon witness testified.

Q. Suppose that a settler would come to the company and say, "Here, I want to pay not to exceed $2.50

an acre for 160 acres of that land out there, and I want to make a home on it—I want to settle on it," and the company should sell it to him, from your knowledge of this grant, I wish you would state to the court whether or not such settler would be able, confining himself to the particular quarter section, however he might select it, to support himself and his family, make settlement there, by any means, either for grazing what few stock he might have on it, or devoting it to agricultural or horiticultural or any other useful purpose?

Q. You may answer.

A. I don't know of any that would be available or practicable for a settler to go on and make a living.

Whereupon witness testified that there is very little settlement on the even sections within the limits of the grant in Coos County. There is scarcely any settlement on the lands. There is very little evidence of any settlement. Most of that land has been taken under the timber and stone act or with scrip. The title, after it passed to the entryman, has most all passed into the hands of some of the large timber holders. These even sections that have been thus entered are all heavily timbered lands. There are scarcely any remaining even sections within the limits of the grant, not entered. It has been most all taken up with the exception of a few spots that have been burned, an old burn. What has been burned is mostly vacant and still public land. Most of these even sections within the limits of this grant in Coos County have nearly all been taken under some law of the United

States, mostly under the timber and stone act and when the entry was completed and title vested in the entrymen the lands have all passed substantially to timber investors. These lands owned by these various timber companies in Coos County, including the timber lands outside of the grant towards the Pacific Ocean owned by these various timber companies, the C. A. Smith Company and the Simpson Lumber Company and other timber investors, is most all very heavy timbered country and compares very favorably in the estimation of timber men with timber elsewhere in the State. It is considered just as good as any part of the State he believes. C. A. Smith, he believes, came from Minneapolis, Minnesota. Witness has made a few trips into Curry County, and has passed through some of the timber lands in that County. He does not remember that he has passed by or been on any of the unsold railroad lands in Curry County. He has been in township 31 south, range 12 west, which is partly in Coos County, but knows that, only in a general way, he has not cruised that township yet. He has been some on township 34 but has never been in township 35, range 11. He has been in the north third of township 31, range 13. The general character of those lands that he has visited or seen in Curry County is that they are all on high hills, steep, rough country, and the timber is fairly good there. The land's chief value, as far as he has seen, in Curry County was for timber. He could not see any that was available for agricultural purposes. He has been cruising for Coos County four years to arrive at the valuation of the

lands for assessment purposes, to classify and value the lands as for assessment purposes.

Whereupon defendants offered in evidence "Defendants' Exhibit 314" to which complainant objected as not properly identified, which was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon witness testified that he is personally acquainted with Charles A. Smith of the C. A. Smith Lumber Company and has been at all the camps of that Company, but could not say as to the number. The Smith-Powers Logging Company is C. A. Smith and Mr. Powers, residing in Marshfield. That company logs for the Smith mills. He has seen the publication called the "American Lumberman," published at Chicago. It is considered the best publication in the timber interests that there is, on the Pacific Coast or elsewhere in the United States. A photograph on the front page of the issue of November 11, 1911, of the "American Lumberman" is the photograph of C. A. Smith, he believes, and he recognizes that document as the "American Lumberman" of November 11, 1911. The photograph or picture shown at page 48 looks like that country in a general way, but he cannot see any particular marks that would show it was taken in Curry County for sure, but he can see that it is a forest country just the same as it would be. They have plenty of that kind of timber shown at page 49 of this magazine. The tim-

ber where the man is standing between the two large trees seems to be a fairly good stand of timber for that locality. He has seen a good bit of the Port Orford Cedar in Curry County and the picture at page 51 is a good picture of the Port Orford Cedar. The picture at page 53 looks as though it might have been taken in that country and he has seen such trees as those of that timber shown on pages 54 and 55, and the picture on page 55 is a good picture of the spruce timber growing in that country. He has cruised all that spruce timber where the camp is situated. They cut such timber as that shown at page 59 of this publication. They cut a good deal of that high timber there of that heighth. The picture at page 61 is a good picture of that section as also the picture at page 63 which is a fairly good and typical illustration of what is on the ground after the timber is felled. The picture at pages 64 and 65 correctly represents the situation as it actually is. He recalls a large number of young men that were sent out to take lessons in forestry and reproduction of forests from some of the forests of Coos County, but he does not recall where they came from. He knows there was a large number there, this year. The map at page 66 is a good map of the timber holdings of the C. A. Smith Timber Company in that part of the country and the picture at page 67 seems to be a good picture of that forest country. The profile map or panoramic map at pages 68 and 69 looks as though it was a good picture of that country in general outline and he has seen such timber lands in that section as shown on page

70 of this publication which seems to be a good photograph. He recognizes the picture at page 73 as a picture of camp 5 showing the operations of the C. A. Smith Lumber Company, or logging company, and of the yarders as they call them and has seen such works, there a good many times. He has been in the mill of the C. A. Smith Lumber Company at Marshfield and the photographs at pages 87, 88, 89, 90, 91 and 92 of this publication seem to be good, true photographs of that mill. He has been at the yard shown on pages 94 and 95 of this publication and it is a good picture of that yard as it was at the time the picture was taken. There is not so much lumber in that yard at the present time. The picture at page 99 is a good picture of portions of the timber there of the C. A. Smith Timber Company. He recognizes these pictures relating to the mill and the timber lands of the C. A. Smith Timber Company and has seen this before. They are good pictures. He recognizes the picture on page 111 of the modern steel steamship "Nann Smith," owned and operated by the C. A. Smith interests. That ship is still operating there.

Whereupon defendants offered in evidence all parts of this publication recognized by the witness and particularly all of the article describing the C. A. Smith Lumber Company and its interests at Marshfield, Oregon, in Coos and Curry Counties, Oregon, to which complainant objected as incompetent, irrelevant and immaterial and not properly identified, excepting the photograph of C. A. Smith and the C. A. Smith lumber-

ing plant at Marshfield and the vessel "Nann Smith" mentioned by the witness, which exhibit was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon, witness further testified upon cross-examination as follows:

Questions by Mr. Rabb:

Mr. McCarthy, you testified in relation to some of the photographs in Defendants' Exhibit 315?

A. Yes, sir.

Q. Now, so far as the photographs of the lands are concerned, you cannot identify those lands as being Coos County lands, can you?

A. No, not as——

Q. They may be in Bohemia somewhere?

Mr. Fenton: Read that question and answer. He interrupted him.

Question and answer read.

Mr. Fenton: Now, I would like to have your answer.

A. Some of the pictures of the timber land, might be taken in other parts of Oregon and show just about the same, but we have such timber there as is in all those pictures.

Q. You don't mean to identify those photographs as photographs that were taken in Coos County?

A. I don't suppose any one could do that. No one

could do that, you know.

Q. You didn't take the photographs?

A. No, I didn't take them.

Q. And don't recognize the places as places that you are acquainted with?

Mr. Fenton: Object to that because it is not divided. The witness says he didn't take the photographs, and he could answer that No. The other part of it is another question, as to whether he recognizes any of the spots that those photographs show—logging camps, etc. You may answer.

A. Well, there's some of them I can recognize the places. But in the standing timber, where there isn't anything but the standing timber, of course, that I couldn't do—recognize the spots.

Mr. Fenton: Speak a little louder.

A. Where it is pictures of the standing timber, I cannot recognize any particular objects in the pictures that I could say positively they were taken there.

Mr. Rabb: I move to strike out the exhibit from the record as improperly identified, witness not being shown to have knowledge of the matters contained and stated—of the photographs shown by this exhibit.

Mr. Fenton: Counsel for defendants give notice that they will call another witness to further identify these photographs as being photographs of what they purport to show timber lands of the C. A. Smith Lum-

ber and Manufacturing Company—and that these are all places in Coos and Curry Counties.

Whereupon witness testified that he had lived in Oregon eight years, residing in Minnesota and Montana before coming to Oregon. He lived about ten years in Minnesota and worked in the timber camps for awhile first and then started timber cruising there. He was employed in Minnesota by different companies,—The Musser-Sauntry Lumber Company. He was raised on a farm and worked in the timber woods more or less all his life since he was able to do anything. He was raised in New Brunswick, Canada, which is a timber country. The farms in his native country were farms that had been cleared. Timber had previously grown upon the lands. The O. & C. lands that he cruised in Coos County were all high mountain lands. He cruised first in township 24, 25, 26, and 27, range 10 west; township 26 south, range 9 west, west half of that township; township 29 south, range 9 west, all of that township; township 21 south, range 10 west, what lands the company has in that township; two sections in township 26 south, range 11 west, he believes a little more than that—that is about all he guesses. These lands are on the west of the Coast Range. Practically all of the timber lands in that section are owned by large timber companies, both in the even and odd sections. He cannot recall any particular pieces of the lands of the Oregon and California Railroad Company in Curry County that he has been on. He only knows the general character of the formation of these lands and all

the lands there in Curry County are up on high, rough, hilly ground, very rough country there, aside from little valleys. He does not base his knowledge as to these lands solely upon his knowledge of the lands in Coos County. He has been through Curry County and may have crossed over some of the railroad lands in Curry County, but he could not recall any particular quarter section or anything of that kind, that he has been on; in a general way he knows these lands. All the lands in Curry County aside from the little strip along the coast are very high and mountainous and rough. He has never been over these lands in Curry County that are involved in this suit. He has been through the country enough to know what they are, in his opinion. He did not testify that he had never seen these lands, only in a general way. Vegetation grows very heavy thereon. All the lands on the western slope of the Coast Range are very prolific in their growth of grass and trees and vegetation grows very heavy there. On the low bottom valley lands along the rivers grasses and crops of all kinds grow well, but in the timbered area there, there is practically no grass growing in the timber. The timber is too heavy and dense for any grass to grow. He does not know whether the heavy growth of timber prevents its growth but the grasses do not grow in the timber there as it does in other places where he has been. The entire country in Coos County was originally most all timber. Along the bottom lands the heavy fir timber did not grow as it does on the mountain tops. It was more of myrtle, maple and alder and such timber

as that, which is not merchantable timber as a rule, growing mostly on the bottom of the Coos River and the Coquille River and is not merchantable timber, as a rule, it is a different class of timber, different soil. There is nothing in the formation of the soil that would prevent vegetation or grasses growing on these lands involved in this suit, on parts of them the soil is fairly good, where it is not too rocky, on the high mountain slopes some places there is nothing but bed rock, there is no soil on them, other places are very rocky, such as boulder rock and some of these townships, for instance in township 27 south, range 9 west it is not altogether a lava formation, but is something similar to that and the soil is very rocky. There isn't practically any soil on it. It is all a small shale rock. This is in township 27 south, range 9 west. It is very heavily timbered down there. There are parts of the land that he has cruised that is good soil. The soil is good wherever there is soil that is not too rocky. It does not always take good soil to raise good timber because one will see very large timber growing practically on rocks. They root almost on the bare rock. This large timber grows on almost barren rock, in some places. He is acquainted with the newspaper called 'The Coos Bay Times, Marshfield, Oregon," and it is a paper of general circulation in Coos County. The photographs in that paper indicated as "Coos County Strawberry Field" might have been there. They raise strawberries there and there is some timber there in the background of the strawberry patch. He cannot tell from that photograph whether

it is heavy timber or not. It may not be saw timber. The photograph "Pear Tree in Blossom" might have been there, they raise some pears there, not very much. They do not raise them to a very large extent. In places there are pears. He recognizes the photograph "Anson Rogers' Beautiful Farm Home on South Coos River" in this same paper as the home of Mr. Rogers in Coos County. It looks very much like it anyway and is a photograph of his home farm there. He cannot recognize the photograph "Another Coos County Farm" in this paper as any particular farm, but it might have been there. There are such places. He recognizes in this paper the photograph "Panoramic View of Stephen Rogers' Farm" as a photograph of Mr. Rogers' farm in Coos County and he recognizes the photograph "Myrtle Lodge, Home of Mr. and Mrs. F. E. Rogers, on the South Coos River" as the photograph of the home of Mr. and Mrs. F. E. Rogers. There is timber back on the hills back of the farm, as shown by the photograph, and there is some growth of timber or what appears to be perhaps logged off land, but there is no land cultivated that was logged off. There was some they used for grazing land on the hillside there on the slopes. It is fair grazing land on the lower slopes. The photograph in the lower left hand corner on the same page of this paper entitled "Coos County Farm Scene" he recognizes as a farm scene in Coos County. It might have been there and the photograph "Panoramic View of Stephen Rogers' Farm" looks something like dairy farms down there.

Whereupon complainant offered said paper in evidence marked "Government's Exhibit 118" which was received and so marked and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon witness testified that he does not know exactly the population of Coos County. It must be somewhere about 12,000 he thinks. The average price of the good bottom lands in Coos County along the river is somewhere about $70.00 per acre. He believes they ask higher prices than that for some of it along the rivers. Dairying, farming, fruit growing, lumbering, coal mining, market gardening, cattle and poultry raising are all carried on to some extent in that county, he believes. He has been a timber cruiser for the last fifteen years and has examined lands largely for big timber companies who were not interested in obtaining agricultural land. They do not want agricultural lands. In working for these timber companies he examined a piece of land with reference to the timber. They must always report in making cruises on the possibilities of the land, whether it is suitable for agriculture after the timber would be removed from it. He cannot recall, only in a general way, to what timber company he ever made a report on the agricultural possibilities of the land after the timber was removed in Coos County, he generally put it in his reports of any land that he ever examined, the character of the land and made a topographical map of the lands that he examined. He always has done that. At times he may not have done it. The

principal thing in cruising lands for logging companies, examined by him was to examine as to the timber and the logging facilities only. He did not consider the agricultural value of these lands he examined in Coos County while he was working for the logging and timber companies so much as they do now since he has been working for the county. In a general way the topographical map always shows the slopes, whether they are high or steep. Most always he made out his report whether the land was suitable for agriculture or grazing after the timber would be removed, or whether it was very high, rough and rocky. He is not speaking of the county, but in a general way, all estimtaes that he made or ever made. He made written reports. As to all the land he cruised for the Simpson Lumber Company he made topographical maps of each forty acres. In a general way he believes that the reports will show whether it was agricultural land or not. He cannot say that he specifically reported whether each subdivision was suited for agriculture or not, he could not say in that report. He was not so particular at that time as he is now. Whereupon witness testified:

Q. Don't you know, as a matter of fact, Mr. McCarthy, that the Simpson Lumber Company was not interested a particle in the agricultural character of that land?

A. No, that wouldn't make any difference. A cruiser's report should show that anyhow, if it is right.

Whereupon witness testified that in making his

cruises for the county his reports show whether the land is agricultural land and he classifies that in its present state and shows whether it will be suitable for agricultural or grazing lands, or whether it might be, after the timber would be removed—that is shown on each forty acre tract in a place provided for in the report by itself aside from the timber in the report blank. In the report blank, there is a place for inserting whether it will be agricultural land when the timber is removed. He worked some for other timber companies besides the Simpson people. He cruised some for C. R. Smith, the Menasha Woodenware man, but was not with them very long. He picked up some timber for them, sold some timber to them, but not very much. He did not sell them any logged over lands, he sold some lands of the Simpson Lumber Company, part of which had been logged over. The Woodenware Company understood that part of the lands sold to them was timber, but they did not understand that all of the lands that they purchased were timber. They had their own man cruise the lands. Their own cruiser came there and cruised the lands. He cruised the lands first but they sent a man there before they closed the deal to cruise it. They had two or three men on it of their own. There is considerable agricultural land around Myrtle Point and there are several little towns down in Coos County. Myrtle Point is somewhere near or in township 29 south, range 12 west, but he does not exactly remember without looking at the map. There is no railroad running into Coos County from the outside. There is a short local railroad

from Marshfield to Myrtle Point. Transportation coming in from the outside is only by water. Title has passed from the Government to practically all of its lands in Coos County there, the even numbered sections. There is very little vacant Government land in the county. Most all of that was taken before he came into the county. There is a little agricultural land around the town of Sitkum, in Coos County. There is not any land that would be very easily cleared and cultivated in the eastern part of the county. There is a little strip in the valley along the Coquille River at the town of Sitkum in township 28 south, range 10 west. It is a very little narrow strip. Bridge is in township 29 south, range 11 west, somewhere near there. He has never cruised very much right around there near Bridge. There is a little strip of valley along the river where there is some agricultural land. He does not know where Bancroft is. It is a little postoffice station. He does not think there is any town there, but he does not remember ever being there. He knows there is a place called Bancroft there somewhere. He knows Gravel Ford, there is some agricultural land around there. There are a good many streams running through Coos County, branches of the Coquille River. There are not many that run into Coos Bay except the Coos River. There is some agricultural land down close to the mouth of the streams. There is considerable bottom land but after one goes up a certain distance, the valleys are very narrow, just narrow strips. There is quite a little bottom of agricultural land along the east fork of the Coquille River down there at Gravel

Ford. There is quite a little bottom of agricultural land in the northern part of Coos County north of Myrtle Point. In the timber area, there is scarcely any range, there is considerable range along on the east branch of the Coquille. The timber is too thick. The grass does not grow and cattle do not range on the northern part of the county at all.

Whereupon upon re-direct examination witness testified that he started four years ago in April cruising the timber lands of tax payers in Coos County each year for the County of Coos and put in all the time for two years and practically ever since, with the exception of about three months last winter. He found out who owned the lands by generally checking from the records or sub-divisions, generally checked from the records in the Court House and marked off the sub-divisions and the owners, generally had a map of the owners, ownership maps of all the townships in the county. The county did not furnish him an ownership map, he made these maps generally himself from the records. The county made an assessment of these lands to the owners each year based upon his cruise. He thinks 60,000 acres of the unsold lands of the company in Coos County would be very near what he had cruised, it might not be exactly that. While cruising these lands and the other timber lands in the county, he became, in a general way, familiar with the other part that he did not cruise. A couple of townships that the company had lands in, that he had not done very much in, he has not cruised them by forties. He has a sufficient or general knowl-

edge of the part that he did not cruise, he had been over it more or less, and had such general knowledge as would enable him to make a fairly good estimate of the character of the soil, of the timber on the lands, and its general conditions. Coquille and Coos Rivers and other short streams are heading, with their branches, in what they call the Coast Range of Mountains, the west slope of the Coast Range. He would guess that Coquille, the County seat of Coos County in a straight line, is about eighteen miles to the mouth where is empties into the Pacific Ocean. Myrtle Point, on the Coquille River by railroad, is about thirty miles from Marshfield, and Coquille, the County seat to Marshfield by rail is about eighteen miles, and he thinks they call it nine miles from Coquille up to Myrtle Point. He thinks that Coquille has about 1,200 people and Myrtle Point about 1,500. Myrtle Point is the last town of any size on the way from Marshfield, by way of Myrtle Point to Roseburg. After one leaves Myrtle Point going east he has to go by stage or mountain road to reach Roseburg through the Coast Range.

Q. "What is the fact, if you know, as to whether or not practically all of the argicultural, dairying and fruit lands of Coos County are situated on the bottoms of the Coos River, the Coquille River and other streams leading into the Pacific Ocean or into these streams, in the western part of Coos County and outside of the limits of the grant?

A. Yes. All the land that is cultivated in Coos

County is practically on the river bottom."

Whereupon witness testified that these are all west of the west boundary line of this grant involved in this suit that he knows of. He does not know of any that is not. He thinks this "Government's Exhibit 118" "The Coos Bay Times, Marshfield, Oregon, Evening Edition" was published sometime in January, 1912, or early last winter. The photograph "Anson Rogers' Beautiful Farm Home, on South Coos River" is on tide water of the Coos River. The tide does not ebb and flow over these lands that are shown that appear to be diked in that picture. That tide land or tide stream must be about fifteen miles from Marshfield; from the Pacific Ocean to the mouth of South Coos River is about six miles by water. South Coos River empties into the Coos River about ten miles from Coos Bay, right below that Anson Rogers' farm shown in that picture, a short distance. Marshfield is on Coos Bay. Coos River empties into Coos Bay. South Coos River empties into the bay right west of Marshfield on the east side of the Bay. Marshfield is situated on the west side of the bay. The character of this land showing the beautiful farm home of Mr. Rogers is what they call the bottom land of Coos River. It is not tide lands. Most any kind of grass grows on it, but he could not say whether it grows before it is cultivated. The "Panoramic View of Stephen Rogers' Farm" is right across on Coos River a short distance above the Anson Rogers place shown in the picture. There is no tide water running through this farm of 740 acres with 220 acres in cultivation described

in the article. The tide ebbs and flows in the stream that runs through this land. The heighth of the tide there is ordinarily about seven feet at this point where these farms are. These farms must be ten miles away from the western boundary of the line of this grant to the nearest point. There are no wagon roads hardly on Coos River, and it would be about the same distance by wagon road to the nearest west boundary line of this grant, from the nearest point of these farms. There are really no wagon roads on Coos River above tide water. They go by boat or launch and the transportation is most all by launches on the tide water of these streams. Above these farms the valley narrows down to a small gorge and there is scarcely any bottom land above tide water in Coos River. The Coquille River empties into the Pacific Ocean south of Marshfield and there are small river steamers running from Bandon to Coquille City. There is tide water in Coquille River above Coquille City, but he could not say what the ebb and flow of the tide is as far up the river as Coquille City, it must be four or five feet, probably more than that. The tide affects the waters of the Coquille River as far east as Myrtle Point. Myrtle Point is very near the limit of tide water, except in very high tides. These farms and dairy ranches and fruit farms lie outside of and west of the grant, towards the Pacific Ocean. Sitkum is a ranch farm house and a postoffice there and has a population of probably ten or twelve, along there. He could not say how long it has had a postoffice, but thinks it had a postoffice when he came to the county. There

are no stores there. There is no place of business there, only the stage station. The man that runs the stage between Roseburg and Marshfield keeps his horses there and has a ranch there. They keep stage horses there and change horses there. This stage line runs the whole year, but there is a part of the year they have to use pack horses instead of wagons on account of snow and bad roads, more particularly the snow on the mountain range, from Sitkum to Roseburg. There are two stage lines from Coos County to Roseburg, one from Coos to Roseburg, and the other from Myrtle Point. The stages pass over what they call the Coast Range of Mountains. Capa Arago Lighthouse Bridge is right west of Marshfield and below the mouth of the entrance to the harbor of Coos Bay. This Coos County Strawberry Field is not within the limits of the grant. The picture of the Coos County Dairy Scene is a tide water scene. The milk is transported from these dairy farms to the creameries and cheese factories on Coos River by these launches. On Coquille River they probably do a little dairying above tide water, on the smaller bottoms along the streams but on Coos River the transportation is all practically done on tide water by launches. There are several cheese factories, there are two or three places perhaps more that manufacture cheese in Coos County. There is not any particularly large cheese factory there that he knows of. Any of them that he knows of are on tide water. There is one on Coos River on what is called Catching Inlet, a branch of Coos Bay and one over on the Coquille River on tide water.

Whereupon on re-cross-examination witness testified that Coquille River empties into the ocean. There is not any bay there, he believes that it runs over into Myrtle Point, in township 29 south, range 12 west, and then there are branches extending out eastward into Douglas County and south into Curry County and east over the edge of Douglas and Coos Counties and that is the east branch last referred to. He is acquainted with Bridge, situated in township 29 south, range 11 west, and there are some ranches right along there. He thinks Bancroft is a postoffice, but he cannot locate that—he knows there is a place of that kind there somewhere. Etelka is in township 31 south, range 12 west, and there are some ranches there along the south fork of the Coquille River. All the ranches on the Coos River side on the Coos Bay side are practically all on tide water. There are other ranches in the western part of the county on the Coquille side on branches of the Coquille River. There are small bottoms that run up above tide water, very narrow bottoms on most all of the branches. These people would naturally build their cheese factories down at tide water in order to market their cheese. He supposes the transportation facilities on the Coos River side are practically all water. On the other side there are roads running up to all the ranches so far as there are ranches on the river. It is water transportation on Coos River. They would naturally put a manufacturing industry of any kind down near the shipping point, that is where all the ranches are on the Coos River, they would naturally put them there. All the ranches on the Coos River side on

both branches of Coos River on Coos Bay in the valleys running into Coos Bay are on tide water. On Coos River they are all on tide water. On Coquille River a large majority of them is on tide water. These are bottom farms, that is, referring to these Coos farms and on the Coquille side. The ranches around Bridge and Bancroft, Myrtle Point and Sitkum, are on bottom lands and have very little hill lands. Sometimes they clean off a small piece of the side hill for grazing or something of that kind, but they are practicaly all bottom farms in the County. These are not tide farms on tide water around Bridge or Sitkum. Tide does not extend into eastern Coos County or around Sitkum or Bridge. There is not very much tide at Myrtle Point. That is just about the head of tide water, it just raises a little there, the tide varies there at different times of the year, he is acquainted some with the variation in the tide but cannot recall the exact figures. There are three stage lines running over into Coos County, one from Drain and two from Roseburg. The one that runs from Roseburg by Sitkum runs only part of the year, they have quite a high range on the road. There had been no serious accident on the stage road by way of Sitkum but the serious accident had been on the Myrtle Point road and it is not the condition of these roads more than it is the snow, that prevents these stages from running during the winter time. The Myrtle Point stage runs all the year round from Roseburg into Marshfield, part of the time in the summer it is an auto stage. The Drain stage runs all the year round, it crosses over the Coast Range but

not so high as the Roseburg line. The Drain route follows the valley of the Umpqua River down to the Coast. There are quite a number of ranches along the Umpqua River right in the valley on the bottoms. The Coast Range varies from place to place, some places the divides are lower to get over than in other places. The Coast Range averages about 3,000 to 3,500 feet in altitude in places, that is, the divide will average that. He does not mean that that would be the altitude from tide water of the divide, the divide is broken and is not continuous.

Whereupon upon re-direct examination witness testified that the stage line from Drain to Marshfield goes down to Elkton, down the Elk Creek, a branch of the Umpqua River, and then follows the Umpqua River to Scottsburg, and at Scottsburg the passengers are transferred to a boat and taken to Winchester Bay, on the Pacific Ocean, and at that point the boat is abandoned and a stage takes them up, and the passengers are carried by stage on the beach to a point on Coos Bay, and there take a boat and are transferred by boat on Coos Bay to Marshfield. There are some ranches along the Umpqua River between Elkton and Scottsburg and from Scottsburg to Gardiner located along the river bottoms. These ranches seem to be general farming and dairying, and they raise some grain along there. He does not think there is any valley from Scottsburg to Gardiner. He does not remember any. There are places from Elkton to Scottsburg where the valley is about from a quarter to a half mile wide. The Umpqua River follows

a deep gorge from Elkton to Scottsburg and the bluffs on either side of the Umpqua River all the way down through that canyon varies from fifty to one hundred feet and then the mountains are high there. The gorge would probably be fifty to one hundred feet, but there are high rocky slopes above that—high mountains on both sides of the river. The Umpqua River practically cuts a gorge through the Coast Range. He believes that Myrtle Point is outside of the westerly boundary line of the indemnity limits of this grant. Sitkum is the eastern limit of the farm lands along that branch of the Coquille River, and is just on the eastern boundary and in the adjoining section to the Umpqua Forest Reserve shown on "Defendants' Exhibit 259." There is one store at the town of Bridge, a small, little country store, and no other business there except a little farm. He could not state the number of acres of farm land there at Bridge, little farms extending up the river from there, little narrow strips of bottom along it, he could not say how many acres there would be. Bridge is located on the middle fork of the Coquille River about twelve miles from Myrtle Point. It is a mountain stream, and at Bridge it does not narrow into a gorge, it is not navigable and you could nearly jump across it in summer time, in winter time there is quite a lot of water in it and it is a swift stream. He thinks they have driven some logs by there from above. The C. A. Smith people get most of their logs by logging railroads. Formerly they got most of them down there from the mountain streams, they would roll the logs down by the mountain streams, but the

Smith people get most of their logs by railroads. Logging down these streams is practically abandoned. They use donkey engines to haul the logs into the streams, a short distance from the streams and a logger can move a log with a donkey engine and cable without resetting his engine, about a quarter of a mile. If he wanted to move it farther, he would have to reset his engine.

Whereupon on re-cross examination witness testified that Myrtle Point appears to be on the edge of the limits of the grant, by reference to "Defendants' Exhibit 259." Myrtle Point is an agricultural town depending upon agriculture. There is a sawmill there. Local people have a sawmill there, but he does not remember the name of the company. That mill cuts about 40,000 feet in ten hours and he supposes employs fifteen or twenty men. There are other farm houses close by Bridge that probably get their mail there, but right in what is called Bridge he does not remember of more than a couple of residences there. There are probably a couple of houses within a range of a quarter of a mile of Bridge.

Whereupon J. F. NELSON, called as a witness on behalf of defendants, being duly sworn, testified, that he is sixty-two years old, resides at Mulino, Clackamas County, Oregon, and is at present a farmer, and he has resided in that county about thirty-six years and occupied the position of county assessor from 1902 to 1909, and while such resided at Oregon City. His present business is farming. He is very well acquainted with the unsold lands of the Oregon and California Railroad

Company in Clackamas County, where they are, and is acquainted with the even sections within the limits of the grant and became acquainted with them before he was elected assessor. He was deputy in the assessor's office at that time, and went around over the county, and over parts of this land belonging to the company, as deputy assessor. He was deputy assessor three years, under John C. Bradley two years; under Bradley from 1894 to 1898 and Williams from 1898 to 1902. He did not assess these lands while he was deputy assessor but passed over them as deputy. During the seven years that he was assessor he assessed these lands, he was over them while he was deputy, but not while he was assessor. He has not been over and through them since that time, frequently, but he has been over them several times; they used to go in there hunting and fishing. He passed through them twice while he was deputy assessor. These lands are situated in the southern and eastern part of Clackamas County, and most of them in the southern part of the county. These lands are nearly all in the Cascade range. The majority of the land is timbered land, or land that is worthless. The majority of it is up in the Cascade Mountains. To which testimony complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon, and public land entries thereof. Whereupon witness testified that the value of these lands would be

mostly for the timber on them. Most of this timber is fir and spruce, he thinks. There is very little of this land down in the valley where it could be put into agriculture, there is but very little of that, most of the land is up in the mountains where it would be beyond the settlements. In his judgment there is not over four per cent of the lands of the company in that county that would be good for agricultural purposes. Some of the land in the foot hills which is not clear back on top of the mountains, would be good for a short time in the summer for grazing, which he would judge was about twenty per cent of the whole. There is only a short time in the summer that it can be used for grazing purposes, because they would have to wait until the snow goes off. It is up near the snow line and they have to wait until the snow gets off the ground and the stuff grows. It is mostly pea-vine, wild stuff like that. He supposes horses, cattle or other stock might perhaps graze on that land for three months in the summer after the snow was gone and the stuff grew, which takes some little time.

"Q. Now, suppose a so-called actual settler or purchaser should want to buy 160 acres of land in this grazing section, to make it a home, and was required to confine his stock on this 160 acres for grazing purposes, and was not permitted to have a range outside, what would you say as to his ability to support his stock on this 160 acres? Limiting it to that 160 acres only?

A. Why, he couldn't do it. He couldn't keep his stock on it. He couldn't have feed for them.

Q. Why? Why do you say that?

A. Why, because he couldn't get the feed off that 160 acres to feed from the time the pasture gave out until it came in again the next year.

Q. How many stock would 160 acres of this land, any 160 acres of this land, really support for two or three months in the summer, if they were limited to that 160 acres?

A. There couldn't but a very few head. You see, this pea-vine doesn't grow all over. It just grows in spots."

Whereupon witness testified, that a good deal of the grant is of a rocky nature, and there is loose rock on it. It has been burned over, a good deal of it. Most of the other vegetation is this tall fern that nothing will eat. He does not know that there is any other particular vegetation. Once in a great while one will find a spot where there happens to be a little other grass. There is a good deal of salal on that ground up there. He never saw any animal eat the salal. He does not think they would eat it. Possibly goats might, as they will eat most anything. That land that has been burned over in Clackamas County might be used for grazing purposes, if there is anything on it. He would judge that about thirty-five per cent of it could be so used. The burned area is in the southern part of the grant, in Townships 6 and 7 South, Ranges 2 and 3 East, in the south part of the county. Butte Creek is the line between Marion and Clackamas counties. The line between Clackamas

and Multnomah Counties is in Township 2 South, he thinks. The line between Multnomah and Clackamas Counties runs practically east to the top of the Cascade Mountains. Most of the company's lands would be in what is called the southeast part of the county. The Forest Reserve which is at Bull Run, is close to Bull Run; part of Bull Run is in the Forest Reserve. The Cascade Forest Reserve is east of that. He has been at Wilhoit Springs, and Gowley Creek and Butte Creek. He has not been out to the head waters of Clackamas River, which heads in the Forest Reserve. He has been on Clear Creek, Canyon Creek and Cazadera, all through that country; and has been to Cherryville and Eagle Creek, all along there, and has lived in Clackamas County thirty-five years. He considers that the railroad land that has timber on it, would not be good for anything, after this timber is removed; that is for a settler or a person to buy, or for a person to go on. He would not consider that it would be worth anything, because it is so far back in the mountains that they couldn't raise anything on it to make a living on it and for the reason that it is so far back in the mountains, the soil, he does not consider it good to raise anything on, and it is so far back in the mountains, they have frost away late in the spring and early in the fall. Climatic conditions on account of frosts and elevation would interfere with the production of crops. The soil is what he calls "shot land," meaning soil that won't pulverize up like the lands do down in the valley. It works up in little bits of round lumps and dries up. Down in the foothills they raise

some garden stuff and some grain, but no one has any land up in that part, back where the railroad land is. He does not think there is any grain or fruit, to any extent, could be raised on these unsold lands if the timber was taken off. He knows this side, where they have tried to raise grain and fruit, and they raise very little. He knows by experience what it will cost to cut down and clear this land of the stumps of fir timber, because he had land cleared up, and it will cost from $75 to $100 an acre, depending upon how heavy and big the timber is. The land that he grubbed and cleared was fir and some little pine. It was just medium as far as the timber is concerned, neither heavy or light. He bought powder and had the stumps blown out.

"Q. Suppose that the land was timbered, and would carry six million feet of saw timber, board measure, to the quarter section, what would you say as to about what that would cost to get the roots out—take the timber off and get it ready so you could plow it?

A. Well, six million feet is just medium, a medium amount of timber on a quarter section. I would judge it would cost $75 an acre.

Q. Well, now, after you had cleared this land, what would the bulk of it be good for, if anything?

A. Well, I don't know where the timber is whether it would be good for anything or not. I don't think that it would raise anything worth while, that is, to pay for farming.

Q. Why?

A. Because it won't grow.

Q. Well, why won't it grow?

A. Because the soil is not fit for agricultural purposes, and, as I said before, it is too near the snow line.

Whereupon witness testified that there is a good deal of these unsold lands, after the timber is removed, that is rocky, a great deal of it; more than one-half that is up in the mountains is rocky. That is all cut up with canyons up there; wherever these creeks come, there are canyons, and deep canyons, and this timber grows right in the sides of the canyons; and there is hardly any level land, to amount to anything between the canyons. These little creeks that one sees here make deep canyons up there, and the Molalla and Clackamas and all those creeks are very deep canyons. There are no valleys to amount to anything along these creek canyons up there in the mountains where one could farm any. Clackamas County has been settled in the western part of the county, around Oregon City and Milwaukie since about 1840. Oregon City is the oldest town in the Willamette Valley; and it was the first seat of government for the Territory of Oregon, where Dr. John McLoughlin lived and died. Dr. McLoughlin was in the employ of the Hudson Bay Company first, and afterwards when he settled and took up his claim at Oregon City, he never got title, because he was not an American citizen. Oregon City is about thirteen miles from Portland. Mt. Hood is in the eastern part of Clackamas County, Ore-

gon, and a little southeast of Oregon City, about fifty miles, in the Cascade Mountains. Whereupon on cross examination witness testified that he had lived in Clackamas County thirty-five years and had been in Oregon forty-two years. He has lived two miles on the other side of Mulino, on the Molalla River, which is his post office, except six years of that time when he lived in Oregon City while he was assessor. While he was deputy assessor he went through these lands to assess the residents of owned property there. The deputy assessor doesn't assess the railroad land. The assessor himself does that in the office. He went around assessing the people who resided in the county and went over these lands in going to their residences. In visiting the settlers he passed over the railroad lands, and that is his acquaintance with them. The town of Mulino, near which he lives, is some distance from most of these railroad lands; about twelve miles away from most of it. There is a little railroad land within five or six miles of Mulino, and some right close to where he is. Small pieces, but most of the lands of the railroad company are about twelve miles away from his place. He has been over these lands at other times than as deputy assessor; he has been up there fishing and hunting, and all over the mountains. That is a great resort up in there for fishing and hunting, and when they hunt they go all over it. Township 3 South, 1 East, is six or seven miles from Oregon City, and Oregon City is thirteen miles from Portland, making nineteen miles from this land to Portland. The unsold lands in Township 3 South, 4 East is

near Cazadero. He has been all over there. There are settlers all through that country there. Township 3 South, 4 East is settled; 4 South, 3 East is settled and part of 4 South, 4 East is settled. He cannot give the sections now in 4 South, 4 East that are settled and that are not settled; but most of 4 South, 4 East, one is getting up pretty well towards the foothills of the Cascades and there is a portion of that, that is settled and a portion that is unsettled. Here and there are creeks in through there, and the best lands are all taken. All that is left in there now is something that is rough, and is not really worth taking up, because it is on the sides of canyons. 4 South, 5 East and 4 South, 4 East is the same. Dodge and Elwood are up in the foothills of the Cascades. Elwood is south of Sandy. He did not go up to Elwood from Sandy, but went in the other way. He has been all through there. These lands are very rough, cut up with creeks and canyons, and everything—all of this. A good many of these claims—part of them—are on the side hills and are worth nothing but as grazing lands. There are a good many of these settlements in through this section. They get a good piece of land in 160, and the balance of it is grazing land on the side of the canyon. These creeks make big canyons. 5 South, 2 East is a good township, that is all settled, that is good farming country in there. There is very little unsold railroad lands in that township. The company has a little piece of railroad land right here on the Molalla River, probably 30 or 40 acres in there. Section 13 is in the north end of that township, along the Molalla River, and when

one gets up there and a little back, the Molalla commences. All of the lands that are on that Molalla—there is some good farming lands on the Molalla—after one gets up a little further there is a little valley. There are good farming lands in the eastern part of this township, in 5 South, 2 East. He is acquainted with the railroad land in Section 25, Township 5 South, Range 2 East, the Southeast quarter of Section 25 is back in the foothills of the Cascades, and he could not say that he was acquainted with that specific tract. 5 South, 3 East is a settled township; not all of it, he does not mean that it is all settled; it is partly settled, there are settlers in that township. Township 5 South, 4 East is getting up into the foothills of the Cascades, there are settlers in there, it is partially settled. It is not a fact that there are settlers in all of these townships. After one goes south from 6 South, there are but few settlers. There are some settlers in 6 South, 2 East and 6 South, 3 East. He does not think there are any settlers in 7 South, after one passes 7 South, 2, 3 or 4 East. That is getting up into the Cascade Range and he does not think there are any settlers there. He would not say positively whether there were or not, but he does not think there are. He had a plat of every piece of land in the county when he was assessor for his own use, and he knew all about the land. There are some settlers in 7 South, 2 East, the other side of Soda Springs. There are no settlers in the township where Table Rock is situated. There are some settlers in Township 6 South, 4 East. Township 5 South, 5 East, is up in the foothills. It is possible there might

be some settlers in there. He cannot say exactly that there are no settlers at all. 5 South, 4 East is getting into the Cascade Mountains. 4 South, 5 East, is in the Cascade Mountains, east of Cazadero and Estacada. There are settlers in that township and a few, but not many, in Township 3 South, 6 East, which is way up in the Cascade Mountains. There are not many settlers there, he thinks. He is perfectly satisfied that there are not many settlers there, but he would not swear there wasn't. He would not be positive, but he is convinced there are some settlers in Township 6 South, 4 East. Township 6 South, 5 East, part of it is in the Cascade Reserve and part of it is settled. In Township 2 South, 6 East, Marmot is settled, and at Cherryville there are some settlers, but not many. That is in what they call the burn. Dodge is up in what they call the German burn. That has all been burned over years and years ago. There must be settlers in 3 South, 6 East. There are several townships where there are no settlers. This county runs to 8½ South, he thinks it is, and 9½ East.

"Q. Now, please examine the map, Mr. Nelson, and tell me what townships have no settlers in them, to your knowledge?

A. Well, we will say 7 South, no—none—I wouldn't say there was none in 7 South, 2 East. 7 South, 2 East, you see. Here is the county line—3 South and 7 East.

Q. That is 7 South, 3 East you are pointing to.

A. What was it you asked?

Q. I asked you just to name the townships there were no settlers in?

A. 7 South, 3 East, there are very few. I cannot answer those questions positively from my memory.

Q. You wouldn't testify positively, then, that there are no settlers in any of these townships?

A. Well, I would testify that there was no settlers in it, to the best of my knowledge; but I could tell by going to the assessment roll, I think, because we assessed. I have got maps of Clackamas County, or did have, that showed every tract of land and who owns it at the present time every year, and if I could examine them I could tell exactly what townships and everything was settled, and what was not.

Q. But from your present knowledge, you would not attempt to testify positively as to what townships had settlers and what had not?

A. No, sir, I wouldn't do that, because I don't want to testify to anything but what I know."

Whereupon witness testified that the locations of these lands in the different sections odd or even, makes a good deal of difference in the formation of the soil and in the lands; for instance, Section 3, 6 South, 5 East, might be a good section, and some other might be in a canyon or worthless. The numbering of the sections would make no difference. In the southern part of the county, covered by his testimony, there is probably no difference between the railroad lands and the even num-

bered sections. Most of the northern part, covered by his testimony, was taken up before the land grant was given to the railroad. His testimony is in regard to the railroad land, because the good land has been either taken up or bought up until one gets back into the Cascade Mountains. There is some of the land that is worthless, that they wouldn't have, even down here in 5 South, 2 or 3 East, some that is worthless, they wouldn't have it. The general character of the land is the same, whether on the even numbered or odd numbered sections, and his testimony would have to cover the condition of the country as it exists there.

"Q. You never examined this—ran the lines on this land—to see if 160-acre tracts could be selected by 40-acre subdivisions, that would furnish support for a man and his family in cultivation and use of the land?

A. No, I never ran the lines, but a majority of the land is up in the mountains, so far back that it would not support a man and his family. There is parties that have land up in this side of the railroad land that cannot make a living on their land, because produce or grain, or anything of that kind won't grow. It has been burned over, and it is poor land. Is poor land, that is, all stuff won't grow on it. Once in a while you will find a piece of land there that you can grow some fruit on, or you can grow a little vegetables.

Q. Isn't it a fact that this shot land you have mentioned is generally considered good fruit growing soil?

A. In a fruit location; but when it is too far back,

it isn't worth anything.

Q. If the altitude there is not very high, is it, Mr. Nelson?

A. I don't know just what the altitude is, but it is getting pretty well up when you get up to 6 and 7 South, that is, when you get up to 6 South, 2 East, there is a valley Wilhoit Springs is in. When you get past that, you get right up in the foothills of the Cascades. I don't know what the altitude is. I know parties that have gone on Government land in 6 South, 2 East, and tried to make a living there, and gave up, moved out, because they couldn't raise grain or vegetables to live on.

Q. You were so informed? That is from hearsay, I understand?

A. I saw it, and have been there.

Q. You didn't know anything about their uses of the land, did you? You didn't know how they cultivated the land?

A. I did.

Q. Except what you were told?

A. I knew the parties well, and knew them for years.

Q. So you would say that none of this land is susceptible to cultivation in the grant?

A. No, I don't say that at all. I don't say there is none of it at all, because there is some of it in the grant that is good land—some of it.

Q. I mean in Clackamas County, that you have testified to?

A. Yes, that is what I mean. There is some good land in this grant in Clackamas County that is susceptible to cultivation.

Q. Where is that land located, Mr. Nelson?

A. It is 4 South, 2 East, that you was looking at here—a very little. There is not much land that is good for cultivation; but this in 4 South, 2 East, is what we would call in the valley, and that could be cultivated. In Section 11, 4 South, 2 East, they have got some land there that, after the timber is removed, if a person would clean it up, it would be farm land; they could farm it. But it would cost them $100 an acre to clear it up—more than the land is worth.

Q. Your experience in farming has been principally in the valley land, hasn't it?

A. I have been around. My farming, personally, has been in the valley land, but I have lived up in the mountains, and seen where they farmed there on this burned-over land, like the railroad company has. Persons will try it for a while, and then they will give it up. They cannot make a living on it, and move out. I know of several that has done that."

Whereupon, witness further testified that there is considerable of this railroad land that is not burned over. If it had been burned over there would be no timber on it. Second growth is not considered when one is talking

about timbered lands. Of course, there is second growth of timber; but when he speaks of timber lands, he don't mean second growth. Some of the timber in those foothills is good timber. To make it accessible to market they would have to build a logging road and railroad in there. There are no streams one could run the logs down. They would have to put a railroad in there. These timber lands are about fifty miles from Portland. There are some of the railroad lands in 4 South, 3 East, that are susceptible to cultivation. Possibly there might be some railroad land there, a little in there, in Township 4 South, 3 East, that would be tillable. The railroad land, when they assessed it, if it was not timbered land, and could be cultivated, was put down in that way on the assessment roll, so that he would know what kind of land it was, but he could not remember the sections of Clackamas County; there was over one million acres in the county, and it is utterly impossible for him to remember each section, just how it lays. He has a way of knowing the percentage of these lands that are susceptible to cultivation, or suitable for agriculture, and figured it out from the assessment rolls and his own personal knowledge. He has been over a great share of the land himself. A good deal of the land in Township 5 South, Range 3 East, is settled and possibly there might be some tillable land in the railroad company's land. He could not tell about Section 7. He does not remember the sections in each township, just how they are. Township 5 South, 3 East, is out about Canyon Creek. Some of the specific tracts he could testify to, from his

personal knowledge, because he knew the sections and knew the land, where it is; but as a general thing, he wouldn't do it. That is only in the southern parts of the county. He knows that land is worthless. He can testify to a good deal of that land in the southern part of the county as worthless. He can testify that the unsold lands in that vicinity generally, because all of the unsold lands are unfit for cultivation. A person couldn't make a living on it; if it were cleared up a person couldn't make a living on it. He does not mean that his testimony shall go to all the lands in Clackamas County to that effect, just the lands in the Cascade Mountains, that are so far back they are not worth cultivating—a person couldn't make a living on them. Of course, they have good land in Clackamas County, a little of it, but not much; private individuals own most of it. There are settlements running up into these townships, within which these lands are situated and until one gets too far south. In 6 South, 2 East, there are some little settlements, and in 7 South, 3 East, a very little. Butte Creek cuts across through there and cuts off some of those two townships, and puts it in Marion County. There is a good deal of livestock raised in Clackamas County. There isn't near enough stock raised in that county to supply the markets. There is a good deal of stock in the county—there is a good deal of stock bought outside of Clackamas County for the markets here, and after one gets back in the foothills there isn't so very much stock raised. Mots of the sheep and cows from Eastern Oregon range on the Forest Reserve. He does

not think the unsold lands in Clackamas County would make a good sheep range, people never take any sheep up there. There is a good deal of land in Eastern Clackamas County that is not in private ownership, there is quite a lot in Eastern Clackamas County outside of the Forest Reserve, he could not tell how much there is. There is considerable fruit raised in Clackamas County, but he does not think considerable fruit is raised in the vicinity of these railroad lands; or very much in the eastern or western edge of the lands in the grant. As a general thing farmers have a little orchard for their own use, and that is about all the fruit there is raised around there. He has heard of the Hood River fruit country, at Hood River, Oregon, on the slope of Mt. Hood, part of the Cascade Mountains, but does not know whether it is generally recognized as one of the finest fruit countries in the United States. He thinks they haven't tried it. People who want to sell lands will say that it is good for a good many things that it is not good for. He does not know whether the Hood River fruit country is producing good fruit now or not. He would like to say in explanation a little more about the Hood River country. When asked the question he didn't understand about the Hood River fruit country. He was thinking of Mt. Hood. The Hood River fruit country is, of course, a good ways from Portland, on this side of the Columbia, across the Cascades. He knows all about that country. Mt. Hood is situated in Township 2 South, Range 9 or 9½ East, in the eastern end of Clackamas County. Clackamas County runs to

the top of the mountains. He has been up to the Hood River fruit country and knows that it lays in the Cascades. He does not know how far from Mt. Hood the fruit country is, he could not say in regard to that. Mt. Hood is in 2 South, 9 East, right on the edge of Clackamas County; 9 East is 18 miles east; 2, 3, 4, 5, 6 and 7 South, Ranges 2, 3, 4, 5 and 6 East, wherein the railroad lands are located; Mt. Hood would be 18 miles east of these railroad lands. He does not know the distance from Mt. Hood to the Hood River lands. The Hood River lands are altogether in different shape from the lands on this side of the Cascades. Hood River is down on the Columbia, and naturally would be good fruit land, the company's land is up on top of the Cascade Mountains, where he don't think it would be a fruit country at all. He couldn't say from having seen Mt. Hood, which is visible from the fruit lands in the Hood River Valley, and the lands of this grant in Clackamas County, what, if any, difference there is in the distance from Mt. Hood to the Hood River fruit country. He really hasn't any opinion, because he does not know anything about it, and cannot tell. He has been to Hood River several times, but never paid any attention to the distance between Hood River and Mt. Hood. He knows that the Hood River fruit lands are in the foothills of the Cascades. These lands of the railroad company are about on top of the Cascades, and the Hood River lands are down in the valley, on low ground next to the Columbia River, and that makes a great deal of difference. It is a fact that the Cascade Mountains, the foot-

hills commence at the Columbia River, at the town of Hood River, and gradually go up to the top of the mountain. There isn't much of a foothill to these fruit lands. It isn't very far from the Columbia River up to the fruit lands in Hood River; they are not much higher than the Columbia River. Some of these fruit lands are practically all on hillsides, on rolling land, and some of them are right on top of the flat; table lands, gradually rising—flat lands up from the river. There is no river flat, but the Columbia would naturally be the level. He does not know how far these fruit lands extend back. He was up on the first bench and went over it. He never saw any fruit growing along on the flats of the Columbia River. He was not up there. He does not know as to whether the flats along the Columbia River would overflow at this place. He does not think the Columbia could get high enough to overflow them. It is rather steep from the Columbia River up at Hood River and along there. It is not straight up. They have a wagon road up there. It is a steep hill. He never paid any attention to how that land lies towards Mt. Hood, but it naturally gradually ascends to Mt. Hood; it would have to do so. He could not tell if that is a broken country, as he never was outside of the town of Hood River, up on the top of it. It is a broken country when one gets up in there. It might be broken at the river, and still when one got up on the first bench, there might be a little stretch of level land there. He never tried to raise any fruit or vegetables, or any grains, or agricultural products of any kind, in the vi-

cinity of or on any of these railroad lands, but he is well acquainted with persons who have, and has been at their places. These persons tried to raise fruit there. He does not suppose they were experienced fruit people. The names of these persons were Mr. Paynter, Mr. Russell and Mr. Davis. Russell lived there and Davis lived there, about fifteen or twenty years, perhaps twenty-five years, and were old settlers in that country. They had to go into the cedar timber and make shingles to make a living. They couldn't make it off their land. He knows that because he was clerking in a store, and received the shingles from them, and knew all about it. He has been all over their lands and knows all about it. He knew all about their financial condition, from having clerked in a store where they bought groceries, and being up on their farms. He has been up on their farms while he was in the store and after he was out of the store, when he moved into Clackamas County. They lived up there fifteen or twenty-five years. When the timber and deer ran out, so they couldn't make shingles and get their groceries, they moved out. They have all left there. He thinks they have been out of these perhaps fifteen years or more. He cannot give the section where they lived, but they lived in 6 South, 2 East. He does not know the section they lived on. He thinks they both lived in the same township and range, they were quite close together. They lived there in 1876, and he does not know just when they left. He came down here in Clackamas County. He knows they have been gone—Davis has been dead a good many years, but his family

left there. Russell is living now, and he left there quite a good many years ago. He has been on Russell's farm. Russell tried to raise grain, hay and oats for his cattle, and the oats would grow about a foot and a half or two feet high, where they did grow, and the fern would grow a great deal higher. He never got the ferns out of the ground. Davis died down on his son's farm in the valley. This fern land is not generally recognized as good vegetable land, even when it is cleared. Some of it is, but fern will grow very large where one cannot grow anything of vegetables, or fruit, or grain, to amount to anything at all. One generally finds ferns in rich, loamy soil most all over Oregon. One will find ferns where the land is not all rocks, but where it is rocky gravel, fern will grow most any place. It will go down to moisture fifteen or twenty feet, the roots will. He does not know that a number of the best fruit farms in the State of Oregon are on fern lands.

Whereupon J. T. GRAY, called as a witness on behalf of defendants, being duly sworn, testified that he is forty-five years old, by occupation a farmer, and has lived in Township 12 South, Range 6 West, in Benton County, Oregon, where he has lived for fourteen years, about fourteen miles or thereabouts from Corvallis. He has been over about half of the unsold lands of the Oregon and California Railroad Company in Benton County. He first hunted over them, and this summer he was out a month and a half as a fire patrol. He traveled them as a fire patrol for the Oregon and California Railroad Company, to protect their timber and

other timber as well, from fire. Part of these lands are covered with fir timber, and part are burned. To which testimony complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be deemed as taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof. Whereupon witness testified that about three-quarters of the lands that he had traveled over was timbered and its chief value was its timber. Some of the lands he had visited were burned over; he could not state the number of acres, but would say there is a good scope of country, probably ten sections, which had been burned over. The character of some of this soil is gravelly, and other is more of a clay soil, while some of it is loose soil, with fern in it. Most of the vegetation grown on this land is fern and salal and some portions of it has grown up to brush. He would say that of the entire holdings of the company, both timbered and burned over, that he has visited, there would be not over fifteen per cent suitable for agriculture or horticulture, or any useful purpose, other than the timber that is on it. He would hardly know what use to put these burned over lands to, but these few settlers who have settled between the railroad land back of the peak, have tried to run a few goats, with out-ranges, but he does not know as to their success. There is very little grazing on these burned over lands; the vegetation is fern with a few patches of peas early in the spring. What pea vines there are, are only in

small patches. These pea vines only afford sustenance for animals two or three months.

"Q. Now, suppose, Mr. Gray, that an actual settler, under this law which the Government is seeking to assert against the company, should apply to the company and be allowed to purchase 160 acres at $2.50 an acre for a home for himself, I wish you would state to the court what this man would do, or could do, if anything, with this 160 acres, if he was required to confine himself to that land, and did not have the privilege of pasturing outside land, or doing work outside.

A. Well, there is very little of it that can be got to with a wagon road without a big expense, and it is generally rough, and I don't think a man could live on it the year around—he would have to move out in the winter time.

Q. What do you say, and what can you say, and what is the fact, as to whether or not such a man, under those circumstances, on 160 acres, could or could not make a living at any useful business on the land?

A. Not at present, unless something would turn up that we haven't got in our community there."

Whereupon witness testified that a majority of these timber lands is fairly good timber. He has had experience as a logger, and knows the fir timber that is capable of being manufactured into saw timber or lumber. He has had experience as a logger nine years for the Benton Lumber Company in Benton County. About twenty per cent of these lands he has been over in Ben-

ton County would make first grade lumber. Most of the timber would come under the head of second class timber; a small portion would be first, and a small portion would be third class. He has been over the balance of these lands in Benton County, or near them, or across them, to some extent, other than those that he has spoken of, but not enough to give evidence before the court here of what the character of the balance is. He noticed the general character of the balance, just from looking at it, and it is broken land, and it was just about the same as what he had been over, from looking at it as he went along. There are other burned districts in this unsold land, besides the 6,400 acres of burned area that he had mentioned, that he had not been over, but it is the same kind. Its value is less, because it is further back in the mountains, where nothing but a pack horse could be gotten to the land. Mary's Peak is 4,600 and some feet high, and has good timber around it. He doesn't know the height of the others. Grass Mountain is a little lower. Mary's Peak is a snow peak and carries snow until July. He doesn't know the exact distance, but it is southwest from Corvallis and must be sixteen or eighteen miles. Mary's River rises on Mary's Peak and flows in a northeast direction, but not direct, and empties into the Willamette at Corvallis.

"Q. Where are these lands now, chiefly, with reference to Mary's Peak?

A. The timber land is around Mary's Peak, east of it, and further southeast, across the little valleys

there that is between."

Whereupon, on cross examination, witness testified that he has been in the employ of the Oregon and California Railroad Company about a month and a half this summer, and is the only time he ever worked for the company, and is not employed by them now, but was up until it rained and made the fire safe, about a week ago; something like that, since he has been out for the company, a week or ten days ago. It has been raining somewhat all summer, but they have had one or two seasons that they were required to look after the fire. He couldn't tell the exact number of acres that he patrolled. The tract he patrolled follows the ridge about sixteen miles long, varying in width on account of being burned off, and perhaps six miles wide on an average. He could give a part of the location of these lands by looking on a map. He lives in 12-6 West and there is some timber there. In 12-7 West there is also timber, and he patrolled these townships; and he had a view of it that way. A little valley runs through, known as the Alsea Valley and Wells Creek. There was a wagon road there, and he drove that way. He has lived in 12-6 West ten years the 8th of November, 1912, and prior to that time he lived about two miles southwest of Corvallis. He now lives on Section 32, which was a homestead that he had purchased. There are settlers in that township besides himself, several of them. There is a little valley, which is just settled, the valley part. Not all the settlers in that township are located in that valley, some are across the divide from him, out of the timber

entirely. He never ran the lines of the sections that he patrolled, but just passed along the hills; he has been on both sides. There are settlers on the even numbered sections in the valley, and there were a few settlers on the lands of the company behind Mary's Peak; but on the ridges there are no settlers except in the valley. They are on both odd and even sections in the valley. They were taken by donation claims or sold to them. There is a town of Alsea in one of these townships, a postoffice, and there are settlers in that vicinity. The township line runs through Alsea. The north part of Alsea is divided. It is in 14-8 West. The dividing line is right in the north part of Alsea, splits the town. He has only a very general knowledge of the remainder of this grant, from having observed it at a distance, except that he has been almost all over what he has testified to, on both sides of those ridges, broken country, that has this timber on. He patrolled that country. When it was raining he made some trails on these sides, so that the land could be got to in case of fire when it was needed with a pack horse. The soil is not very good, in general, in the townships where the railroad lands are situated, it is too broken and steep, and only a small portion of the soil is good. There are parts—small parts of it—that are good, but they are small. There are no other grasses besides pea vines the season round that would furnish range for goats, sheep or cattle. There are places in the foothills where they have a little bottom land and a lot of side hill, and they range this rough country in that way. Where one has enough valley land to raise

feed for the winter, they can keep stock and range on these hills in the summer, and drive them down in the winter and take care of them.

"Q. Isn't it a fact there are a number of 160 acre tracts that a man could take up in these railroad lands, that is, not by legal subdivisions, but in 160-acre tracts, 40-acre subdivisions, that a poor man could take up, a man that was up against it financially, and make a living there for himself and his family?

A. No, sir; none at all. That question is like this—a man would have to have money to live on, and be able to go out and buy, before he would be able to go up there and live a number of years to clear this up and live at all, even if the soil was good.

Q. There is some agricultural land in there, isn't there, in its present state?

A. Down in this valley is very fine land, but it is narrow.

Q. There is some of that land is railroad land, isn't it?

A. That is the valley?

Q. Yes.

A. Not to my knowledge. There might be a small piece somewheres that I don't know of; but none, literally speaking."

Whereupon witness testified that he lives in Section 32, Township 12 South, Range 6 West. There is no

railroad land adjoining him. There is not a great deal of railroad land in that township. There is some of this Coos Bay wagon road grant land there, he thinks it must be, because Section 5, right close to where he lives, belongs to that grant. Whereupon on redirect examination witness testified that he goes to these lands for patrolling, by a road running right down through the center of the district, called the Alsea road. Alsea is a valley over on the coast. It reaches tide-water further down. Alsea has been settled thirty or forty years. He has been in the Alsea Valley. He is not prepared to tell what kind of land is on the coast in the Alsea Valley; but around the town of Alsea there is nice, good land. Alsea has three or four hundred population. The Alsea River heads right west of Mary's Peak, and the other branch heads around back of Bellfountain, by a little mountain they call Green Peak. Bellfountain is a post-office, has a store or two, and is out across on the Willamette Valley side. There are some settlements on the Alsea River, which leads over into the Alsea Valley, along the river. This valley is a narrow valley. Down to Alsea it is fairly well timbered, both sides of this little stream. He got into these lands of the company to patrol them by cutting a trail for his saddle horse; one could not drive an automobile or team through them very well. Whereupon, on recross examination, witness testified that Alsea is about thirty miles from the coast, he would say a little further than that. Alsea Valley leads to the coast, but the town is not on the coast. Alsea is about the center between Corvallis and the coast. Cor-

vallis is a city of some size and the Oregon Agricultural College is located there. There is quite a lot of good fruit country in Benton County; they are setting out large orchards. Corvallis is outside of the timber belt and it is about fourteen miles by wagon road before one strikes much timber; and it is about the same distance to the railroad lands which he was patrolling; that is, about that distance of fourteen or fifteen miles to the nearest foot of it. Corvallis is situated in the Willamette Valley and is surrounded by a fine agricultural country. He is not prepared to say whether there was or was not some railroad lands in the townships in which Corvallis is located, or in the adjoining townships.

Whereupon W. V. FULLER, called as a witness on behalf of defendants, being duly sworn, testified that he resides at Dallas, Oregon; is at present a merchant; has lived in Polk County eleven and a half years, and has been in the timber business in Polk County about eight years, and has handled and cruised timber lands and has had experience in cruising timber lands in Polk County. He does not know anything about the lands in Polk County east of Range 6 West. These lands, whatever there are, are just a very small fraction and are not timbered, not much, if any, timber on them, but in Ranges 6, 7 and 8 West, he is familiar with all of the unsold lands of the Oregon and California Railroad Company and has been practically on every forty acres of these lands and familiar with them since 1901. The lands lie in the Coast Range of mountains on both sides, on either slope, east and west side and on top of the

mountains, and are mostly very hilly land—he supposes as hilly land as there is in the Coast Range of mountains in Polk County, and the elevation will run from 1000 to 3500 feet, to which testimony complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be deemed taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof.

Whereupon witness testified that most all of the railroad lands in Polk County are well timbered. The main portion of the timber is fir, but in some parts there is a small amount of white pine, larch, hemlock and cedar. There are five or six sections of land, the bulk of which has practically no timber on it. The remainder of these lands would run from 40,000 to 75,000 feet per acre. This would be considered a good stand of timber. The value of these lands lies almost wholly in their timber. There is very little of the total area of these unsold lands that would, in his judgment, be agricultural or suited to agricultural or horticultural purposes. If one wanted to go into it by sections, he could get at it easier. He thinks there is not ten per cent of it that could be used for agricultural or horticultural purposes, for the reason, in the main, that the elevation is too great there for farm products or fruit to grow successfully. There is a great difference in the soil. In the main, if the lands of the company in Polk County were on an elevation suitable for raising crops, etc., he thinks they would

raise crops. Some of them, however, are very rocky. Probably thirty per cent of this land could be utilized for grazing purposes. These lands that could be used for grazing purposes lie on a less elevation, say, than 1000 feet, and on this there is a good deal of pea vine and other small growth of vegetation that stock eat. Sometimes the pea vine grows at a higher elevation than that, but not a great deal. He thinks there is thirty per cent, or such a matter, of the entire area of these lands that could be cleared of timber, burned over, seeded to grass, and devoted to grazing purposes. It would cost from $75 to $100 an acre to clear this land of the timber so they could be suitable for agricultural purposes. He has known a good many people who have undertaken to make a living up in those hills, cleared little patches of land at different times, and he knows that at this time one cannot find any of them living there. They did not seem to be able to make a living. Practically all of the entries in the even sections within the limits of these railroad lands have been sold, a good portion of them have been sold. Some are still in the hands of the original entrymen, who hold them yet. The reason he knows to whom this land has been sold is that he has a great many times made out maps of all the lands in Polk County, and he was occupied that way last week several days making out a map for the Spaulding Logging Company. Therefore, he knows practically every forty acres of land in Polk County. The land is owned in the main—the land is owned by the Spaulding Logging Company, and Mitchell & McClure, the land in the name

of Mitchell, Trustee, the Willamette Valley Lumber Company—he has forgotten the parties who bought the Mitchel tract there—five large holders. This land in the even sections was mainly entered under the Timber and Stone act. The homestead entries are exactly in the same condition as the stone and timber entries. The timber companies, when buying in there, did not pay any more or less for a homestead entry than a stone and timber entry, excepting where the settler had possibly cut off ten or fifteen acres of timber to make a home, they would deduct that from the land, because the timber value was not there on those acres, that had been removed. These lands were bought for the timber and that was their chief value then and now. The homestead cabins and other improvements of the homestead entrymen are there yet, excepting in some few instances where they have been burned or rotted down; they are not occupied. Under the timber and stone act no settlement is required. The character of settlers or entrymen was that of any one who happened in the country there; some had families and some had not. In the main, these settlers commuted on their homesteads at the end of fourteen months. They generally complied with the law as to residence during the first fourteen months as near as they could, before they proved up; some of them resided continuously on their lands, and some did not.

Q. Suppose that a man would apply to the company under this act of April 10, 1869, to settle on 160 acres of this land and pay the company the price of

$2.50 an acre, and desire to make it his home and make settlement on it, what, from your knowledge of these lands, would be his ability to do that and make a living?

A. They could not make a living off the land alone. He would have to have some other way of supporting his family.

Q. Well, now, why couldn't he take 160 acres that way and make a home for himself and family, and make a living?

A. One reason is because the land is so heavily timbered, unless he had some outside money to clear the land, it would be an impossibility. Another reason is, as before stated, the altitude is such that crops will not grow successfully, that a man can get his seed back, you might say.

Whereupon, on cross examination, witness testified:

Q. Do you remember of having a conversation with E. S. Foley, a special agent of the General Land Office, at your drug store in Dallas, on or about the 9th day of March, 1912?

A. I remember of having a conversation with some one. I don't remember who it was.

Q. Do you remember of executing an affidavit before Mr. Foley at that time?

A. I don't remember of executing any affidavit.

Q. I will ask you to examine this document and state to the court whether that is not an affidavit that you executed before Mr. Foley on the date stated?

A. It seems to be my signature. Do you want me to read it all? Do you want to ask me any questions about it?

Q. Yes. In this statement or affidavit, Mr. Fuller, is it not stated that "He (meaning yourself) is engaged in the drug store business, and where he has lived,"— "W .V. Fuller, being first duly sworn, deposes and says that his residence and postoffice address is Dallas, Oregon, where he is engaged in the drug store business and where he has lived for eleven years. And affiant further says that for seven years he followed mining and land locating in Townships 7, 8 and 9 South, Ranges 6, 7 and 8 West,"—

A. That is cruising, that word there.

Q. That is "cruising" instead of "mining"?

A. Yes.

Q. (Continuing) "and is familiar with said lands and with their character. At this time the greatest value of these lands, generally speaking, is for its timber, although much of it would be valuable if cleared for general farm purposes, including fruit, dairying and grazing purposes. And affiant further says that on June 11, 1907, he made an application to the Oregon and California Railroad Company to purchase the southeast quarter of Section 31, Township 8 South, Range 7 West"— a word I can't make out—"in Polk County, Oregon, which said application was declined, and said railroad company refused to recognize or consider the application

in any way." Signed "W. V. Fuller." And also stating, "Subscribed and sworn to before me at Fuller's drug store in Dallas on this 9th day of March, 1912." Those statements are contained in that affidavit there?

A. Yes, sir.

Whereupon complainant offered said affidavit referred to in this cross examination in evidence, to which defendants objected as not impeaching evidence, as incompetent, irrelevant and immaterial, and as being prepared by the Government, written out by Mr. Foley as a special agent of the General Land Office in his own language, on some conversation which he may have had with the witness, which said exhibit was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified as such.

Whereupon on redirect examination witness testified that he did not know who Mr. Foley was, and he had forgotten all about the occurrence, but he remembers now that a man did come into his store and talk to him about the land, and he sees that that is his signature to the affidavit. He does not remember—he had forgotten what the document contained.

Q. Did you make the statement to Mr. Foley that "At this time the greatest value of these lands, generally speaking, is for its timber'—you made that statement to him, did you?

A. I presume that I did, yes.

Whereupon witness testified that he presumes, although he could not say, that he also made the statement, "Although much of it would be valuable, if cleared, for general farm purposes, including fruit, dairying and grazing purposes." By the words "much of it" he means there is some of it, quite a bit of it, in fact, that after it was cleared, would be valuable for general farm purposes, including fruit, dairying and grazing purposes. He does not remember that he told him about the climatic conditions that would prevent it being suitable for agricultural and horticultural purposes. He did not talk to him only a little while. Foley did not tell him what he wanted this statement for. He has a record of his cruises referred to in this statement. He made this record in 1907 or 1908, he does not remember which. A good share of it was made by him as the result of his own cruising. He was deputy county assessor and had a contract from the county for cruising all of the timber lands in the county for assessment purposes, and he made that cruise for that purpose, and this is a copy of that record made by him or under his supervision. He will take Township 7 South, 8 West, that he cruised and read the amount of each forty.

Section 1, northeast quarter of the northeast quarter, 2,900,000 feet; the northwest of the northeast, 2,900,000 feet; the southeast of the northeast, 1,800,000 feet; the southwest of the northeast, 2,200,000 feet; the northeast of the northwest, 2,800,000 feet; the northwest of the northwest, 3,200,000 feet. I will state that those forties largely overrun—there was about 60 acres to a forty, or

nearly that. The southwest of the northwest, 2,400,000 feet; the southeast of the northwest, 2,200,000 feet; the northeast of the southeast, 2,100,000 feet; the northwest of the southeast, 3,300,000 feet; the southeast of the southeast, 2,100,000 feet; the southwest of the southeast, 2,000,000 feet; the northeast of the southwest, 2,100,000 feet; the northwest of the southwest, 3,000,000 feet; the southwest of the southwest, 2,100,000 feet; the southeast of the southwest, 2,200,000 feet. Take section 23 of the same township: The northeast of the northeast, 1,300,000 feet; the northwest of the northeast, 1,200,000 feet; the southwest of the northeast, 1,600,000 feet; the southeast of the northeast, 2,000,000 feet; the northeast of the northwest, 1,500,000 feet; the northwest of the northwest, 1,700,000 feet; the southwest of the northwest, 600,000 feet; the southeast of the northwest, 800,000 feet; the northeast of the southwest, 1,900,000 feet; the northwest of the southwest, 2,000,000 feet; the southwest of the southwest, 2,000,000 feet; the southeast of the southwest, 1,800,000 feet; the northeast of the southeast, 2,400,000 feet; the northwest of the southeast, 1,800,000 feet; the southwest of the southeast, 1,800,000 feet; the southwest of the southeast, 2,200,000 feet.

Q. What township and range is that in?

A. 7 South, 8 West.

Q. Now give another township and range.

A. Take 8 South, 8 West, directly south of that.

Q. 8 South, 8 West?

A. Yes, sir.

Q. All right.

A. The north tier of forties in this township run short, as they have overrun in the township north. In Section 1, the northeast of the northeast, 1,500,000; the northwest of the northeast, 2,700,000; the southwest of the northeast, 1,400,000; the southeast of the northeast, 1,200,000; the northeast of the northwest, 1,600,000; the northwest of the northwest, 1,700,000; the southwest of the northwest, 1,400,000; the southeast of the northwest, 1,700,000; the northeast of the southwest, 2,600,000; the northwest of the southwest, 1,900,000; the southwest of the southwest, 3,600,000; the southeast of the southwest, 2,400,000; the northeast of the southeast, 1,900,000; the northwest of the southeast, 2,000,000; the southwest of the southeast, 1,900,000; the southeast of the southeast, 3,400,000—very heavy timber.

Q. Anything in Section 3, Township 8 South, Range 8 West?

A. Yes, sir. The northeast of the northeast, 700,000 feet; the northwest of the northeast, 800,000; the southwest of the northwest, 1,600,000; the southeast of the northeast, 500,000; the northeast of the northwest, 1,300,000; the northwest of the northwest, 1,400,000; the southwest of the northwest, 1,400,000; the southeast of the northwest, 1,400,000; the northeast of the southwest, 1,500,000; the northwest of the southwest, 1,300,000; the southwest of the southwest, 1,200,000; the southeast of the southwest, 1,800,000.

Q. Do your cruisings that you have there in your record show anything for the even sections in that township and range?

A. It shows exactly the same, yes—everything.

Q. You cruised the even sections, too, did you?

A. Oh, yes, certainly.

Q. Now, take an even section there, and give us the cruising on it in that same township and range, alongside of the railroad section—Township 8 South, Range 8.

A. Take Section 2. That lies between 1 and 3 that I just read. The northeast of the northeast, 1,200,000 feet; the northwest of the northeast, 1,400,000; the southwest of the northeast, 1,800,000; the southeast of the northeast, 1,900,000; the northeast of the northwest, 1,400,000; the northwest of the northwest, 1,400,000; the southwest of the northwest, 1,600,000; the southeast of the northwest, 1,100,000; the northeast of the southwest, 1,700,000; the northwest of the southwest, 800,000; the southwest of the southwest, 800,000; the southeast of the southwest, 1,000,000; the northeast of the southeast, 1,800,000; the northwest of the southeast, 1,700,000; the southwest of the southeast, 1,000,000; the southeast of the southeast, 900,000.

Whereupon witness testified that in making these cruisings he cruised by forties—both the even and odd sections. He cruised all of the timber lands in Polk County, over 200,000 acres, including the lands involved in this suit, all of the timber land that run over a certain

amount, that one would call timber land at all. He cruised Townships 7, 8 and 9 South, 6 West; Townships 7, 8, 9 and 10 South, 7 West, but there was very little of Township 10 South, Range 7 West, in Polk County. He cruised Townships 7, 8 and 9 South, Range 8 West. The purpose of this cruising of which he made this record was to arrive at its value for assessment purposes. He is not positive whether it was for the year 1907 or 1908. The diagram shown in his record is a township of thirty-six sections. In cruising these lands he sought to find out the amount of timber, the quality of timber, the lay of the land, the quality of the soil, its distance from navigable water or railroad, and everything that would tend to show the value of the land, and his testimony in this case is based upon this information thus obtained.

Whereupon on recross examination witness testified that these lands he has described are pretty well to the west side of the grant, excepting 7-8, that is pretty well to the east side of the grant in Polk County. The line of the western limits of the grant is in Range 8, extending a little east of the center of these two townships. These two townships are rather in the extreme northwestern portion of Polk County.

Whereupon R. B. HUNT, called as a witness on behalf of defendants, being duly sworn, testified that he resides at Eugene, Oregon, and is a civil engineer, and has lived in Lane County fourteen years. He is well acquainted with the unsold lands of the Oregon and California Railroad Company in Lane County.

Referring to Defendants' Exhibit 259, witness testified that Lane County is bounded on the east by the summit of the Cascade Range, on the west by the Pacific Ocean, and on the south by the Calapooia Range from its junction with the Cascade Range, following westerly to Range 7 West; thence following north on the section lines to the Siuslaw River; then following down the Siuslaw River to the north line of the last tier of sections, or the north tier of sections of Township 19 South; then following west to the Pacific Ocean, and is bounded on the north by the watershed between the Calapooia River and the McKenzie waters, starting from the junction of that divide of the Cascade Range and following in a westerly direction to Range 2 West; then running by sections down to the last tier of sections north, in Township 16 South; then following west to the Willamette River; then following the center of the Willamette River in a northerly direction to the last tier of sections in Township 15 South; then following west to the Pacific Ocean. He has been on each township, and on each section of some townships of these lands marked in green on Defendants' Exhibit 259. For six years he was deputy county surveyor of Lane County, and was engaged in surveying out lines. For several years he was examining timber for private individuals and for a large timber concern. Most all of the examinations that he was making were of lands adjoining the Oregon and California grant, and in some instances they were not, but in most instances they were land adjoining, in the even sections. In the reports he gave on these blanks

of the timber companies he reported the timber and logging conditions, the topography of the country, the soil, and the agricultural lands, and all that would make a complete report of the land, and he made these reports in the form of what are called in this record "Cruisers' Reports." He is a practical cruiser. In every instance in making the examinations of these even sections adjoining the unsold odd sections, he would be running a line between the two sections, and necessarily would pass around the boundaries, and from his knowledge thus obtained, the chief value of these unsold lands of the company in Lane County would be for their timber. To which testimony complainant objected as incompetent, immaterial and irrelevant, and it was agreed between the parties that this same objection should be deemed taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof.

Whereupon witness testified that, in his judgment, he would say there was somewhere between fifteen and twenty per cent of these lands that could be used for agricultural purposes. They are situated — a forty where one comes down to a stream or creek, there would be a few acres out of the forty that would be valuable for agriculture if cleared, but the majority of the unsold lands are further back in the mountains. The settlements of the country have taken up all of the lands that would be suitable for agriculture, and the lands that are left are the lands that are rough and mountainous, cov-

ered with timber, so that it would be very poor for agricultural purposes. For grazing purposes there would be a greater per cent than for agricultural purposes. Under the present conditions there would be only a very few months in the year that these lands would be valuable at all for grazing, but if they were logged, burned over and seeded, there would perhaps be the four summer months out of the year that stock could graze over—perhaps for grazing that would run sixty or seventy per cent of these lands.

Q. Now, let me put this question to you: This that you speak of as being suitable for grazing would be about 60 or 70 per cent provided the timber was cut off, removed, logged, and then the remnant burned, the stumps, and seeded to grass or some growth upon which the stock could have the summer range? Is that what I understand?

Mr. Rabb: Objected to as leading.

Mr. Fenton: Yes, I know it is leading.

A. Yes, sir; that was what I meant.

Whereupon witness testified that it would cost in the neighborhood of $40 or $50 an acre to clear this land suitably for this method of making it grazing, but not to take the stumps out. It would cost all the way from $100 to $150 an acre to remove the stumps and clear the land of roots, so as to make it available for agricultural purposes. The powder to blow out the stumps of one of these average acres of timber would cost from $30 to $50 an acre. One would use black pow-

der, and usually black and giant powder together. The black powder being a slow powder, it is usually used with the giant powder. These unsold lands are chiefly valuable for timber. It would hardly be considered first-class timber, taking it straight through, because all the best of it has been taken up by actual settlers. He knows that timber companies have bought a lot of timber lands from the company, and that the Booth-Kelly Lumber Company has bought a large tract of timber land. There is the Fisher Timber Company—in fact, all the timber companies operating in there.

Q. Then what remains of this grant that is unsold, that is timbered land, is what there is left after a good many years of these lands being on the market for timber?

A. Yes, sir.

Whereupon witness testified that the timber market about ten years ago was very low. He was in the employment of a timber company at that time, and buying timber, and since that time the market has been steadily increasing in value. There is a very little timber of any kind now that has a stumpage value of less than one dollar per thousand. The average value of the best quarter section of these unsold lands in Lane County would be in the neighborhood of one million to a forty, or four million to a quarter section, which would make the value of the quarter section $4,000. The best unsold quarters would be worth at least twice that. He has personal knowledge of a good many applications made

to the company by so-called actual settlers or purchasers of these lands at $2.50 an acre under this act of Congress of April 10, 1869, and these applicants always tried to get on the best quarter sections. Sometimes they make mistakes. He means by that that they try to get on the quarter section that has the most timber.

Q. Well, now, suppose one of these applicants to purchase one of these quarter sections should receive a deed from the company, and the company should accept the $2.50 an acre, and this purchaser should desire to use that quarter-section for an actual settlement for a home, what would be its value for him as a settler?

A. He couldn't use it for a home.

Q. Why couldn't he use it for a home?

A. It wouldn't pay him to do it. He couldn't make a living on it.

Q. Well, why? How would he get any value out of it?

A. The value would be in the timber.

Q. When and how?

A. Well, it has a market value now. He could sell it.

Q. To whom could he sell it?

A. Well, he could sell it. Mr. Wendling, of Wendling, Johnson & Company, is buying in that country there.

Whereupon witness testified that Wendling, John-

son & Company are big timber holders, who have bought large tracts in the western part of Lane County, and who purchased a million and a half of timber at $1.00 per thousand in the last two years. They would have to pay for this land if a man had title to one of these 160 acres thus acquired from the railroad company, the market price, which would be $1.00 a thousand. That is the lowest price he knows of.

Q. Then if a settler could buy this quarter-section for $2.50 an acre, he would get it for $400, and could immediately sell it to a timber syndicate for $4,000?

A. Yes, sir.

Q. Well, now, is that true generally of all of these applications to purchase of this class, that you know of, in that country?

A. Why, yes; generally it is true.

Whereupon witness testified that unless the land is within a Forest Reserve, in the even sections, the title to most of it in the even sections in Lane County within the limits of and adjoining these unsold railroad sections, has been deeded to those individuals. In the first place, patents were issued in the nature of a homestead, taken along the streams and valleys, and afterwards, in the timber, within the last ten years, these lands in the even sections have been taken as timber claims under the timber and stone act. In nearly every case where final proof has been made in homestead cases, if lands were timbered, in these even sections, the lands were sold to some timber company. Large timber holders own a

majority of these lands in the even sections in Lane County. No settlement is required under the timber and stone act. These lands entered under the timber and stone act were sold the same way, to large timber contractors. The Cascade Forest Reserve is in the eastern part of Lane County.

Q. Referring to this land that you say might be grazed land, what is the fact, if you know, as to whether any man could take a quarter-section of it, and use it successfully for grazing purposes, and make a living on it, if he was confined to his quarter section?

A. In my opinion, he could not.

Q. Well, when you speak of it being good for grazing, what do you mean?

A. Oh, in a general way.

Q. Do you mean that, if a man was a stock man and cattle man down in the valley, for four months in the year he could drive his cattle into this mountain range and let them roam over the thousands of acres there, the even and odd sections that might be unenclosed, and in that way get some benefit for grazing? Is that what you mean?

Objected to as leading.

A. Well, I had reference to odd sections.

Q. I understand. Well, now, suppose the odd sections were all divided into quarter-sections, which were fenced up, would it be of any particular value for grazing from which to make a living?

A. Well, the first ten-mile limit there are many.

Q. Well, I mean the indemnity limits, not the place limits.

A. Oh, the indemnity—that would be the thirty-mile limit, you mean?

Q. Yes, the thirty-mile limits. Are there any settlers in the thirty-mile limits?

A. Yes, there are settlers in the thirty-mile limits.

Q. Where would they be?

A. They would be along the streams.

Whereupon witness testified that he does not know the character of the lands, marked in blue, lands deeded by the Oregon & California Railroad Company on this Defendants' Exhibit 259. He is acquainted with the Booth-Kelly Lumber Company lands. They are very fine timber. He knows that the center of what are known as the Wendling mill, and operations of the Booth-Kelly Lumber Company, is in township 16 south, range 1 west, and range 1 east, and he is quite familiar with their holdings through that part of the country, and if the 70,000 acres of the Booth-Kelly Lumber Company are situated near there, it would be fine timber land, and would be the best as compared with the unsold timber land of the Oregon & California Railroad Company in that vicinity. It would be better than what the railroad company has left. The timber around Wendling would average between six and ten million feet to 160 acres. He is acquainted with the

timber holdings on the Siuslaw River, and in the watershed adjacent to or tributary to that river, in Lane County, within the limits of this grant. Porter Brothers own over 20,000 acres in Western Lane County; Wendling-Johnson Lumber Company about 30,000 acres; Sterritt & Hovey have over 20,000 acres; Stewart and R. V. Jones of Portland about 15,000 acres. These are the largest timber holdings, and they are considered fine timber. The character of the unsold lands of the company in that vicinity would be considered as second-class timber, but what would be considered merchantable within the meaning of the market, and he believes would average four million feet to 160 acres, but that would not include the burned areas. The burned areas are generally covered with salal brush. He could not give the acreage of the burned area, but knows that in Western Lane County—he thinks about two years ago—there was a fire that burned over in the neighborhood of fifteen sections of railroad land. This would be covered with brush. Some of it before the fire was heavy timber. The soil of the Coast Range is generally a clay soil, running all the way from a few inches to sixteen feet, with sandstone formation under that.

Q. What is the character of soil as to its being productive or otherwise; where it is burned over, what would it produce, if anything, that could be utilized, taking into account elevation and everything else?

A. The Coast Range is very productive in that part. The hills are not very high on an average. The summit is about 1000 feet above sea-level. The valleys

are very narrow, and numerous spurs—small streams; if the soil was level so you could farm it, why, there is some of it there would produce grain, or most anything in the way of vegetation.

Whereupon witness testified that the lands in the eastern part of Lane County, on the east side of the grant, are much higher and run all the way from 1000 to 3000 feet, some even higher than that. The higher the elevation, there would be more frost than at a lower elevation. This burned over country usually grows up with pea-vine, which can be used for grazing in the spring and earlier part of summer by cattle, a couple of months. On the Coast Range there is what they call rhododendron, black huckleberry, thimble berry and salal brush. He does not know of any animal that will eat salal bushes, but cattle will graze a little on salmonberry bushes. The huckleberry bush grows five or six feet high on an average, but stock does not feed on these bushes but very little. There are several points where there would be snow in the eastern part of the grant in Lane County, during part of the year. One point is called Mt. June. It gets its name from the fact that snow is usually there in the month of June. He recalls among the timber companies or timber investors that hold lands in Lane County, excepting the Oregon and California Railroad Company, Booth-Kelly Lumber Company of Eugene, Boston-Oregon Lumber Company, of which Mr. Winslow of New York is the head, who is also identified with the Indino Quartered Oak Company, also the Drew Lumber Company, of which

Wells Gilbert is agent, the Leffingwell Estate, for which Major Forrest is acting as agent at Eugene, two Brown Lumber Companies, one of Eugene and one of Cottage Grove that has some mills at Cottage Grove, the Wendling-Johnson holdings, of which Mr. Wendling, at Weed, California, is head, Porter Brothers, who have an office in Portland, Sterritt & Povey, with their head office in Chicago, for whom Elliott Bean of Eugene is agent, a tract owned by R. V. Jones of Portland and Mr. Stewart of Astoria, called the Western Oregon Timber Company, or some such name. The Weyerhauser Timber Company own considerable land in there. There is considerable land there that is known as the "N. P." land—Northern Pacific script, but he could not say how large an area of acreage there is of this Northern Pacific script, but knows there is considerable of it through the country. He has done business with most of these timber holders, and is well acquainted with them.

Whereupon on cross examination witness testified that he has resided at Eugene fourteen years; is thirty-six years old; lived at Bandon, Coos County, before coming to Eugene; is a civil engineer by profession; has worked for the Government and the railroad companies, and his work for the Government was Deputy United States Mineral Surveyor, sectionizing in the mineral surveys, but was working for a contractor. While employed in the Government work he was not under salary from the Government, but the mineral surveyors made the surveys. The work was done for the Government.

He did that work as deputy mineral surveyor, and did the work for contractors on Government work, and sectionized Quinault Indian Reservation in 1904 as contract work. He has also been chief engineer of the Pacific Great Western Railroad Company, with its termini at Eugene and the mouth of the Siuslaw River, which is under construction. He ran out the original line for this road. He has had something like ten years experience in timber cruising, perhaps a little more than that, since he started in. As a school boy in the summer months he started out first cruising during three months' vacation, and would work along first one thing, and then another; first as a chainman. He started cruising the timber by making an estimate of the timber. The first thing he did was scaling on what they call a dump, where the logs are hauled in before they are put in the river or on cars for transportation, measuring the logs with a scale. He cruised timber for the Booth-Kelly Lumber Company, Boston-Oregon Lumber Company, the Laswell Company, but these were for large companies. He might have done work for some other companies, but he does not call to mind. The most extensive work was for people in Lane County. He worked for the Booth-Kelly Lumber Company off and on something like seven years, and for the Boston-Oregon Company about sixty days, and during the summer months, one summer, for the Laswell Lumber Company. He was the cruiser and had a compassman with him when making the estimates on this timber. He has cruised timber for practically all of the people of Lane County, who

have been in the business of buying and selling. Before coming to Eugene he was in school at Bandon, and had no business. His testimony is confined to Lane County, and he wants it understood that his testimony goes only as to lands in that county, as far as he has been into it. From this map that he sees on the wall, and from his memory only now, he thinks that there is not more than ten sections in the western part of Lane County in this land grant but what he has been on one line of the section, in township 16 south, ranges 1 and 2 west, and 1 east; township 15 south, ranges 1 and 2 west; township 17 south, ranges 1 and 2 west; township 18 south, range 1 west and 1 east, he believes he has been over eighty per cent of the sections by being on the line. He means by being over it, by being on one line of these sections. The rest of the land in the grant, he is not so familiar with, only by a township, or in a general way, perhaps cruising one or two sections in the township. The ones that he is more familiar with he has just pointed out, or given by number and they are in the eastern part. Those in the western part with which he is most familiar are township 15 south, ranges 6. 7 and 8 west; townships 16, 17 and 18 south, ranges 6, 7 and 8 west. He has been over all but ten sections in the western part of the grant, that is an estimate. He is acquainted with townships 19, 20, 21, 22 and 23 south, ranges 1 west and 1 east; 1 east would apply only to townships 20 and 21 south, with which he is not so well acquainted. In ranges 2, 3 and 4, townships 20, 21, 22, 23 and 24, he is acquainted with these. It would be hard to say how

well acquainted he is with these, he has been over these townships considerably, enough so that if one would name any landmark there he could tell its location, or the topography of the country, map out the streams or the roads. He would know only from memory what sections they would pass, but would know what township they were in. He does not believe that he has cruised any of the lands in green on that map, Defendants' Exhibit 259. He was employed by the Southern Pacific Company in 1909 on a railroad survey, and by the P. R. & N. Co., or Lytle Road, built from Portland to Tillamook Bay as locating engineer for nine months, and located the lines from the mouth of Salmonberry to Satin Falls, and from the Nehalem around Garibaldi and Tillamook Bay. He believes that is a subsidary line now of the Southern Pacific Company; it was known at the time as the Lytle Road. E. E. Lytle, he believes, was the president of the road. He has never been engaged in locating timber claims in his life, or any Government land, excepting that he has bought relinquishments and placed script on them. He bought script and got the lands, when working for the Booth-Kelly Lumber Company. The valley referred to in his direct testimony as the Willamette Valley, is all farming country, and part of township 15 south, 2 west, is farming land, and a part of these green lands on this map in there is susceptible to agriculture and tilling, and there is considerable agricultural land in these green lands in townships 15, 16, 17 and 18 south, ranges 1 and 2 west, and there are settlers in all these townships. Eugene

is in section 31, in 17-3 west, the closest part, would be seven or eight miles from Eugene, and the farthest away would be twenty-five miles. There are settlers through townships 15, 16, 17, 18 and 19 south, ranges 5 and 6 west, and considerable of the land there is under cultivation. There are small farming lands around Goldson. Elmira is in the foothills of the Coast Range, in section 25, township 17 south, range 6 west, and there is some farming land around Blachley, in township 16 south, range 7 west. Triangle Lake is in Blachley basin, and there are farming lands about there. There are a very few settlers in township 15 south, range 8 west, that is what is called deadwood country, and the mountains are very high. It is a large range that runs out and makes Cape Perpetua. There are settlers in township 16 south, range 8 west. There are settlers around Green leaf, on what is called Lake Creek, in section 35-16 south, 8 west. There are railroad lands, colored in green, adjoining or in that section, as shown by this map, Defendants' Exhibit 259. There are settlers in township 18 south, range 6 west. Ivison used to be a post office, in township 18 south, range 7 west, but the party who was there has sold out and left, and there is no one living there now, and there are some settlers in that township. There are a very few settlers in township 18 south, range 9 west, in the southeastern portion, which is back taward Roman Nose Mountain, and is a very high, rough country. There are settlers in all of these townships excepting there might be one or two townships out of the grant where there would not be

any settlers. These would be eastern townships. From the way the township lines run, there is not a township but which hits a stream, and every stream would have settlers on, so there would be no township where there would not be any settlers, but by naming a township there would be settlers in it, for the reason that the township lines are more than six miles from one stream to another. It would be possible to carve out a six-mile square, the boundaries for a township, which did not contain a settler, but he is not positive as to that. He would not want to be understood to say that there would not be such a condition existing there. There are not very many settlers in township 15 south, range 2 west, only on the Willamette side, where the township goes down into the land marked in yellow. That township is a mountainous country, and not merely foothills. It is what is called the Coburg Mountains, the range that comes down from the watershed between the Calapooia and the McKenzie rivers, and the general direction is westerly until it reaches near township 15 south, 1 west, and then it swings around almost south and enters some high hills just north from Eugene, making a gateway. If one would notice from the topography of the country that the Mohawk River flows south, and the coast fork flows north, going through a narrow gap at Eugene, caused on account of the topography of the country, there is quite a high range. The Mohawk flows through township 15 south, 1 east and 1 west; 16 south, 1 west and 2 west; 17 south, 2 west, in confluence with the McKenzie

River. The Mohawk Valley is an agricultural country. The part of the grant in the western part of Lane County has considerable good clay soil, and in this ridge west of the Mohawk River there is some clay soil on that; but the other part, on the slope of the Cascade Mountains, the soil is not so good; there is considerable more rock, there would be a part that could be farmed if the country was level. When one gets near the summit of the mountains, the clay soil has washed, eroded, slid off, so that it is very shallow, and this would be universally true, in the entire country, back into the higher elevations, the higher mountains, the soil would be so thin it would not amount to anything. The timber is poor there. The burned area is over the higher elevation. As a rule, the better the timber, the better the soil. He was born on a farm, raised on a farm until he was ten years old, and that is his only experience in farming, and he would not attempt to say that he has any knowledge, except a general idea, spending most of his life in the country he has learned somewhat. He has spent his life out of doors in the fields, and his work has been such that he had to stay with farmers at their homes, cruising timber, and so on, and he would not want it to be understood that he did not know anything about farming. His farming has not been as an expert, but he would think that he knew something about it, but not as an expert farmer, but by coming in contact with and being around farmers. He never has engaged in farming for a livelihood, and has never taken a homestead, and never settled on any lands, timbered lands, or attempted to clear

them, or anything of that kind. He does not remember of cruising any of the unsold railroad company's lands in Lane County. He has cruised some that have been sold.

Whereupon on redirect examination, witness testified that the lands with agricultural possibilities in the Mohawk Valley, would average half a mile wide for a couple of townships, and narrows then into numerous small streams and valleys; part of it goes out into little branches. The waters in Mohawk Valley are called the Mohawk River, which empties into the McKenzie River. Eugene is about seven miles from the mouth of the Mohawk River, and the mouth of the McKenzie River is about six miles in almost due north direction, and the Mohawk in a northeast direction. The McKenzie River empties into the Willamette River. The valley along the McKenzie through the land about which he is being interrogated, would be south of the McKenzie, which flows close to the foothills to the north. There is a valley along the McKenzie River that extends up a few miles about Waterville, sixteen miles from Eugene in an eastern direction. The McKenzie is one of the wildest and most rapid streams in Lane County, and its waters are the source of fine power sites, and it heads in a very high altitude, in Fish Lake and Clear Lake. These water power sites, on a straight line, must be from seventy-five to eighty miles easterly from Eugene, in the Cascade Mountains. The lands in the Mohawk and McKenzie Valleys, after one enters the foothills of the Cascade Range, that are agricultural,

are small tracts or parcels, and that is true with respect to any of the lands on these streams within the limits of this grant.

Q. Now, counsel asked you if there were not settlers in practically all these townships within the limits of this grant in Lane County, Oregon, and I believe you answered that, possibly with the exception of one or two six-mile squares, there would be a settler or settlers. What character or kind of settlers do you refer to, and where would they be situated?

A. They would be along the streams.

Q. And how much arable land or agricultural land would there be on a homestead or a claim of any one of these settlers thus described by you, and what would be the character of the rest of their holdings.

A. That is where the streams flow through the land that is unsold?

Q. Yes.

A. Why, they would in most cases be small.

Q. What would be the character of the bulk of their lands?

Q. What would be the balance of the quarter-section or 160 acres of this settler, aside from that portion that he might make a garden on, or pasture a cow on, or utilize for any useful purpose as agricultural or horticultural land?

A. It would be valuable for the timber that is standing on it in most cases.

Q. These settlers that you refer to, what character of settlers are they—what kind of entries?

A. Why, I think most of them are homesteads.

Q. What is the fact, if you know, as to whether these lands that are thus settled are chiefly valuable as a quarter-section for timber or for agricultural purposes?

A. Why, in the western part of Lane County, most of the settlers have sold their lands and moved out. Their buildings are there yet.

Q. Buildings vacated?

A. They are vacated; and timber men have bought the land for the timber that is on the 160 acres.

Q. Now, these settlers that are still there, where they have made final proof, what is the chief value of these entries or lands that they have within the limits of this grant?

Q. You may answer.

A. Why, in most cases, they would be valuable chiefly for the timber.

Q. How does the timber on these entries, as timber, compare with that that is on the unsold portion of the grant of the Oregon & California Railroad Company, as to quantity and value in proportion to the acreage?

A. Why, usually on the homesteads there is twenty or thirty acres that has been burned over and the tim-

ber has been killed, so taking it in proportion to the claim of 160 acres, why, I think in most cases it would be a less amount of timber. That might not hold true with timber that is away back, but with the adjoining timber.

Q. Yes, what I mean to inquire about is, is the timber on these homesteads that are still occupied substantially the same kind of timber, and quality, as the adjoining railroad unsold quarter-sections?

A. Yes, sir; certainly.

Q. How extensively have these homestead entrymen abandoned their homesteads? I mean, after they proved up and sold to timber people, how extensive and general is that in Lane County, in the timbered section within the limits of this grant, if you know?

A. Why, it is quite extensive, and some places they have moved out so that where there was a schoolhouse and a postoffice, why, the buildings are standing there, but without any one occupying them.

Q. What has happened to postoffices in some instances?

A. They have been discontinued.

Q. What has happened to the school?

A. Well, there is no school there. I presume there is a school district, but they don't have any school. There is no one to go.

Whereupon witness recognizes the official bulletin known as "Thirteenth Census of the United States,

1910," prepared by the "Bureau of the Census, E. Dana Durand, Director," showing the population of Oregon, the number of inhabitants by counties and minor civil divisions, prepared under the supervision of Wm. C. Hunt, Chief Statistician for Population, and recognizes the same as the official bulletin issued by the Census Bureau.

Whereupon defendants offered the same in evidence marked "Defendants' Exhibit 317," which was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon on recross examination witness testified that there is quite a fruit country a little south of Eugene, and at Creswell there are quite large orchard tracts in the stage of growing. The Bornstadt Company has purchased a large tract, but he does not believe any of the trees have borne any fruit yet, but it is considered good fruit land. That tract has been planted to trees for several years, and there are trees growing on it. There may be among the foothills, on the streams, a portion of these unsold lands of the company that could be used as fruit lands.

Q. Isn's it a fact that quite a large amount of that land could be used for raising grapes, for instance, that might not be available for raising grains?

A. I presume grapes would grow on it; but it would not be practicable, on account of the steepness of the ground.

All of the best land there has been sold and taken up, and only the roughest remains in Lane County, and while his testimony may seem to show that it is one-sided, trying to make it appear that the country is rough, it is simply because the best of the land is gone and this is the part that was considered the roughtest and farthest back that has remained. There are certain benches, table lands, in townships 15 and 16 south, range 1 west, that would be parallel with the ridges, following along out parallel, between the directions of the streams and the ridges running through a part of these townships, that could be used for fruit and grapes. It would not be very wide, but it would be parallel with the streams that would extend through the township. In the valley the fern land has been killed out. There is none there now. Most of the valley land is under cultivation. There may be very small patches in there of fern land, but one could not, generally speaking, say that it was fern land. He believes there have been large areas of fern growth there, by the evidence one can see—referring to the Willamette Valley. There is some dairying land within the vicinity of these granted lands. Cottage Grove is situated within the vicinity of this granted land, and there is a creamery there. Cottage Grove is twenty-two miles south of Eugene, in section 28, township 20 south, range 3 west.

Whereupon on redirect examination witness testified that he does not know of any vineyard of any size in Lane County, that is, a commercial vineyard. He knows of one or two grape vines, but would not call them a

vineyard. There is no one in the business of operating a commercial vineyard in Lane County, and he does not know of any grapes ever being grown on these lands in the grant. The Willamette Valley does not seem to be suited to grape culture. There is no one in that business in Lane County. Cottage Grove is on the main line of the Southern Pacific, south of Eugene, and between Portland and San Francisco. That section of the country has been settled up ever since he can recollect. Lane County is not considered a dairying county. Tillamook County is considered a dairying county. But there are some creameries—there is one creamery in Eugene, but he does not know of any one who has a large herd in that county. The dairying land within the limits of the unsold portion of this grant, either on the even sections or on the unsold lands, would be very small, if there is any.

Whereupon on recross examination, witness testified that he believes the only Government land open to entry in Lane County that is available, is in the Forest Reserve, and it is subject to certain restrictions and regulations so that no one has taken it up.

Whereupon JACKSON F. KIMBALL, called as a witness on behalf of defendants, being duly sworn, testified that he is thirty-nine years old, resides in Klamath Falls, Oregon; has resided there for ten years, and is by occupation a timber cruiser, which has been his business chiefly. He is local representative of the Weyerhauser Timber Company and subsidiary companies in Northern California and Southern Oregon, and is sec-

retary, treasurer and general manager of the Forest Fire Association for Klamath and Lake Counties, the objects of which is the protection of timber from forest fires during the summer season. All the timber companies in Southwestern Klamath County, and most of the larger owners in Northern Klamath County, are members of the Association; and there are, in round numbers, about 500,000 acres of timber lands represented in this Fire Association. These lands, thus represented, are embraced in what is called the Pokegama Plateau, which takes in what is called the eastern part of Jackson County in the high Cascades, and all the timbered lands out to the Klamath Basin; and that is what is called Unit No. 1. The balance of the timber in Klamath and Lake Counties, is operated in connection with the United States Forest Service, but he could not give the acreage of timber land in the Forest Service in these two counties. The Weyerhauser Timber Company owns altogether down in that country 300,000 acres; that is, the Weyerhauser Company and its subsidiary companies. He would have to look up his notes to be sure about this. They have in the Pokegama Plateau, or in Southwestern Oregon and in Jackson County, between 80,000 and 90,000 acres. These lands that are in that patrol are either in Jackson, Klamath or Lake Counties. In the patrol of the Weyerhauser Timber Company and the Weyerhauser Realty Company, are something like 250,000 acres of timber lands, called a yellow pine tract. There is some fir mixed in the holdings. They consider it a good tract for the

timber. Defendants' Exhibit 316 shows the holdings of the Weyerhauser Land Company, and the red coloring on the maps represents the Weyerhauser Land Company, the yellow the Pokegama Sugar Pine Lumber Company, and the green the Pelton-Reid Sugar Pine Lumber Company. He knows from personal inspection, or cruising, or from having been over the land at some time in the past, the lands shown on the maps in red, being map No. 1, the acreage of which he would have to guess at, but would say around 70,000 acres in the Southwestern part of Klamath County and the Southeastern part of Jackson County. He is familiar with the tract as far west as Range 4, and he has been in portions of townships 38 and 39, range 3, but very little. Range 4 is practically on the top of the Cascades. To which testimony complainant objected to as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be deemed taken to all the testimony of this witness, relating to the character of these lands within the limits of these grants, settlements thereon and public land entries thereof. Whereupon witness testified that the general character of that country in that vicinity, within the limits of the grant, with which he is acquainted, is a timbered country on the divide of the Cascades. The lands marked black, with which he is familiar, do not represent the best lands in there by any means. By that he means that the most of the better sections belong to some of the timber companies in there. Referring to Defendants' Exhibit 259, the unsold lands

of the Oregon & California Railroad Company, shown in green, with which he is familiar, generally speaking, are timbered lands, and chiefly valuable for timber. The timber is yellow and sugar pine, white and red fir, what they commonly call larch, which is botanically known as Shasta, or Noble fir. The most valuable lands of the country are in the Jenny Creek country, meaning the lands marked in green. They are timbered lands, and as a rule are covered with white fir, or very old burn, which evidently happened a good many years ago and left those high points with nothing but brush on them. The soil on these railroad lands, with which he is familiar, in the eastern part of Jackson County and the western part of Klamath County, is generally in the high country, and it is more or less rocky and brushy. The percentage of what they call agricultural land in that country, would be very slight, as to those lands with which he is familiar. It would be an awful guess to give the percentage. There are very few acres comparatively. His company owns in there, in the association, 77,000 acres, in round numbers and he should not imagine there were a thousand acres altogether in that 77,000 acres that would be suitable for agricultural or horticultural purposes. There would be little spots, little glades, as they call them—there are a few little spots on the headwaters of Jenny Creek that it is possible a settler might clear a few acres of land and raise a little garden. While that country is very brushy, he has figured in offering this tract to sheepmen, that being a portion of their business in all the rest of their

lands which are under lease, that that entire area in these would carry 20,000 sheep. By that he means all running west of the Klamath River, all of that country in through there. In figuring that over, they also included the territory which is open country in Northern California, and they figured that they would range over a territory, roughly speaking, of about one million acres. The sheep are herded, starting in the low lands early in the spring, with what they call the spring range. The sheep work as the snow recedes, north into the high hills. Starting along in April, lambing time down in the lower country, the sheep would run to Thanksgiving possibly; that is, they would work up in the high hills for possibly four months during the summer, and gradually work back when the storms came on, until they were down in this open land. About half of this one million acres is in California, as he estimates, and that portion is generally an open country. The sheep would be on the timbered portion of this one million acres, which he says would be about 500,000 acres, depending upon the season, but he would say generally about four months. There are seasons favorable, which would mean five months. The people that would own or have 20,000 sheep, or such large bodies, are still to be produced. They have been offering these lands for the last four years in an effort to get sheepmen in there, and so far it has not proven attractive to the sheepmen. They are trying to pursue exactly the same methods which the Forest Service attempts to carry out in selling the right to graze on these timbered lands. He believes that it is a good thing for

their timber, and incidently produces a little revenue. As sheep graze they are herded and graze the lands closely, and there is a good deal of the inflammable material which is on the ground during August, the dry season, that the sheep either eat up, or tramp into the dust, make it into dust, and thereby reduce their fire risk. These sheep are always accompanied by shepherds or herders. The sheep are usually divided into a band of 2,000. In that country down there it is very brushy and a wise sheepman would probably not have over 1,500 sheep, and they generally figure on a camp tender for three herders, not over that. The presence of these herders and campers, they think, is very good. They have a stipulation with them whereby they are to observe certain rules and regulations which the Forest Service has found advantageous, and which they have also found, in reference to care in building their fires; and also in case of a fire, their interests are identical with the Weyerhauser Timber Company, in suppressing them.

Q. Now, Mr. Kimball, suppose that a settler, under the act of April 10, 1869, should apply to the railroad company to purchase a quarter-section, whether in legal subdivisions by 40's, or a string of 40's, or in any way that it might be sold to him, and the company should sell to him, as an actual settler, at $2.50 an acre, any of these lands that are unsold, or in that general vicinity, and he would be expected to confine his activities to his own quarter-section to make a living, either by grazing sheep, or by raising cattle, or by agriculture or horticulture, or any use that he could put this land to as an

actual settler, state, from your knowledge and experience, what would be the result of his attempt to make a home on this quarter-section?

A. If he could use that quarter-section as a basis, whereby he could lease a large area in there, either from the timber companies, the railroad company, or from the forest reserve, a band of sheep of 2000 head would support a family.

Q. How much range would that 2000 sheep have to have on these lands?

A. Well, it is safe to say that they would need in there 200,000 to 250,000 acres.

Q. My question supposes that he is buying this for a home, now?

A. Pardon me, I want to change that. We figure down in there not less than ten acres to a sheep. That would be 20,000, wouldn't it?

Q. Yes.

A. My multiplication is wrong.

Q. But suppose he was confined to his quarter-section, and all the quarter-sections were fenced, if that were possible, what would he be able to do with that quarter-section in grazing or farming, or horticulture, or anything else that would enable him to make a living?

A. There are little spots in there where it is possible that a man might make a living, although the only way they have been able to do it is supplemented by trapping and working out. As far as being dependent

on the soil is concerned, I don't know of a single vacant piece of land in that country—by that, I mean, including the railroad land—where it would be possible for a settler to make a living from the land itself.

Q. Now, there are about seven or eight thousand applicants in this record for the purchase of quarter-sections under the pretense that they desire them for homes, actual settlement, at $2.50 an acre, and in 160 acres, or quarter sections. Within your knowledge in that section of the country, would these actual settlers or would they not be able to make a living on the quarter sections?

Q. You may answer.

A. It would depend.

Q. I mean confining it to the land, to the quarter-section.

A. It would not seem possible to me. Occasionally there is a man that can live on practically nothing, but the average man going in there, I doubt if he could select an area in there where he could raise sufficient produce to support him.

Q. Why would he not be able to raise on a quarter-section sufficient produce to support him—what is the reason of it?

A. The general character of the land in there is not productive, even grain, or any other natural product of the soil.

Whereupon witness testified that the fine fruit lands

in Jackson County are principally in the Rogue River Valley. He is not familiar enough with it to give definite information as to the area of the Rogue River Valley, or how long or how wide it is. He imagines that it is the area which is colored in yellow, pointing to the yellow field in the vicinity of the Rogue River and around Medford, in Jackson County, shown on Defendant's Exhibit 259. He does not know from personal knowledge anything about the character of the Weyerhauser holdings, shown on map No. 4 of Defendants' Exhibit 316, and only knows that the Weyerhauser Timber Company has acquired them for timber purposes. He has very little personal knowledge of the lands shown on map No. 2 of Defendants' Exhibit 316. He cruised in there for awhile, on Little River in Douglas County. These lands of the Weyerhauser Timber Company, with which he is familiar, are covered with a heavy stand of yellow and white fir. Those that he cruised were very good. It is so long ago that he does not remember exactly, but he thinks something between 25,000 and 50,000 feet to the acre. He is not familiar at all with any of the lands shown on map No. 2 of Defendants' Exhibit 316, showing in red the timber holdings of the Weyerhauser Timber Company in Lane and Douglas Counties, in the vicinity of the West Fork of the Willamette River, and the middle fork of the river, and in the vicinity of Wildwood, in Township 22. He is not familiar at all with the lands shown on map No. 3, of Defendants' Exhibit 316, showing in red, lands in the eastern part of Marion County, on Little River, North Fork; also on the San-

tiam River in Linn County, within the limits of the grant and outside of the limits of the grant, in the eastern part of Lane County and some scattered sections in the eastern part of Lane County. His knowledge is chiefly confined to the lands of the Oregon & California Railroad Company and other timber owners in Jackson and Klamath Counties. Whereupon defendants offered in evidence these four maps, Nos. 1, 2, 3 and 4, of Defendants' Exhibit 316. To which complainant objected as not properly identified. Which was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence and identified herein as such. Whereupon on cross examination witness testified, that he is the local representative of the Weyerhauser Lumber Company, and its subsidiary companies, in Southern Oregon and Northern California. He does not know approximately how much land the Weyerhauser Timber Company owns in Oregon, but it owns many thousands of acres, and he presumes, although he does not know, that it is one of the largest land holding companies in the United States. He is acquainted with the lands referred to in his direct examination, described as beginning in the west of Townships 38, 39, 40 and 41, all in Range 4 East; and then Township 38, Range 5 East, down to the California line, and Range 6, beginning with 36, and running down to the California line, in fact from Range 6 East, where the yellow pine occurs in all that country, he is more or less familiar with. He does not mean to say that he has been over every

quarter-section, but in a general way he has been over these townships. A great deal of it he has cruised by forties. He has been engaged in the timber business about twenty years, and it is practically all he knows. In their business down there, since they have started in the leasing business, it has become necessary to get more or less information in reference to farming, but his farming experience is all theoretical. The Weyerhauser Timber Company is about through acquiring timber lands in that section of the country. They have acquired quite a little chunk; timber is what the company is engaged in and that is what it is after; it does not deal in agricultural lands at all, unless it is for timber. It is not dealing or investing down there, generally, in real estate. With reference to the ranging of sheep, about which he has testified, they have all of their lands leased east of the Klamath River; but none in that area which they call the Pokegama Plateau—the Jenny Creek belt. They have large areas of grazing land throughout their timber holdings. Whereupon on redirect examination witness testified that he could not tell the exact acreage of lands they had leased in Oregon, but approximately it is about 200,000 acres. They are all leased to sheepmen and for the purpose of sheep grazing. They leased from year to year and they generally figured about as the Forest Service does, that five acres of range will carry one head of sheep, they have found. They leased only from year to year in Oregon. The sheep man goes in about the first of June, and generally leaves the range by October first; in the high mountains the time is

shortened very much. The leasing business is carried on by the company in that way, partially to get a little revenue and partially to get a little fire protection. The sheep men pay them five cents an acre per annum, generally. They have a little land north of the Klamath Indian Reservation that is not productive. The market price, so far as they are able to get at it, is five cents per acre; that is the price that the sheep men are willing to pay them. If a man had 160 acres of that kind of land, at five cents an acre, he would get $8.00 a year. That is the best that they have been able to do and they are in the business for what there is in it. Generally these people that rent that land in there this way, are large sheep men. He always tried to play fair with the natural users of the range, but in the very nature of things it gravitates to the big men. The little man cannot afford to pay often times what the big man can. The headquarters of most of these men are at Lakeview. Most of the sheep winter on the desert, as it is called; that is a vast body of public land that lies east of the timbered tract in Lake County, which is naturally in the western part; and as a rule they have to drive from about 50 to 100 miles from their winter range to their summer range. The District Forester of the United States gets for the lands within the Forest Reserves in Oregon, where they lease to sheep men, or cattle men, seven cents per head for summer range, and it varies up to, he thinks, thirteen cents, including the lambing range. That is an open country, that is not timbered, is furnished to sheep men where they lamb. The Forest Service fig-

ures stock per acre, for leasing purposes, about the same as they do, generally. There are territories where it takes a great deal more land, and other territories don't take as much, but on an average about five acres to a sheep. The Forest Service charges seven cents a head for their summer range, and his company charged equivalent to twenty-five cents a head, and he thinks they are getting considerable larger incomes than the United States. There are reasons for that all right enough, under their rules and regulations. The lands within the Forest Reserves are known as timber lands. There are, of course, spots in the Forest Reserves that have agricultural possibilities.

Q. But what, relatively, are these lands in the United States Forest Reserve as compared with the unsold lands of the Oregon & California Railroad Company in eastern Jackson County and western Klamath? How do they compare, if you know?

A. The lands of the railroad company that I am familiar with are located on the high Cascades or on the slope of the Jenny Creek plateau, and there is mighty little stuff in there that is much account. But further north, in the forest reserve, there are quite a good many little meadows, natural meadows, in the high plateau country—if that answers your question.

Q. I am referring to the timber character of the two classes of lands.

A. Oh, it is about the same, as far as the kind and amount.

Q. You mean by your answer that in the forest reserve there is probably a fraction more land that could be utilized for grazing, or for agricultural purposes, in that section than in the railroad lands?

A. Yes, I think so. A little further north there are quite a number of spots in there that is good grazing land.

Whereupon, on recross examination, witness testified that in the comparison he was referring to the Crater National Forest. The Forest Reserve is not run as a money making institution; it would naturally charge much less than a private concern would for the use of the range in the Reserve. There are a good many reasons why it is necessary for them to do that. The settler has rights that a timber company does not have to recognize, but the Forest Service does have to. It is very natural that the conditions should be different; and then, of course, his company is out for all there is in it. He would lease his range to the small holder, or small stock man, the same as a large one, if by doing that it did not put them in a position where they could not lease all their lands. They might have a man who would want a choice bit of grazing land in their territory, and by renting to him they would be prevented from leasing a whole lot of other land, and they would probably turn him down as a business proposition. That is the way they look at it. It is a fact that they consider the good will of the settlers living in the vicinity of their lands as some consideration in leasing the lands, a very vital consideration, there is no question about that.

Whereupon MILFORD JACOBS, called as a witness on behalf of defendants, being duly sworn, testified, that he is fifty-four years old, resides at Tacoma, Washington, and his business has always been logger and timber cruiser; he has been a timber cruiser, done nothing else, for the last fifteen years. He has cruised timbered lands in the states of Oregon and Washington, and worked mostly for the Weyerhauser Timber Company. He has cruised timber lands for the Weyerhauser Timber Company, and its subsidiary companies, in the Coos Bay country, and in the country north of Eugene, the Calapooia Range country. He has seen Defendants' Exhibit 316, from a distance, and looked at these maps, and says that he has done a lot of work in the Jenny Creek Basin, in Townships 38, 39 and 40 South, Range 5 East, north of the line of California there, and has cruised lands, he could not say how many acres for the Weyerhauser Timber Company, in the Jenny Creek country. He was sent in there to look over that country, to see what it was, as a timber proposition, and then he did a lot of work cruising afterwards. In going through the country they took notice of the conditions of the country, whether it was a timber proposition or not. He has no recollection of the lands shown on map No. 4 of Defendants' Exhibit 316. He has done quite a lot of work on the lands shown in red colors on map No. 2 of Defendants' Exhibit 316, in Coos County, near the Umpqua Forest Reserve; and also the lands in Coos County and part of Douglas County, east of the Umpqua Forest Reserve, shown on this map. He has done

work on the east side of this No. 2 of Defendants' Exhibit 316, in the eastern part of Lane and Douglas Counties. He has done some work there. He became somewhat acquainted with the conditions of the whole country in doing work on these lands of the Weyerhauser Timber Company. The Weyerhauser Timber Company did not buy isolated tracts of timber. They would not buy a piece of timber unless it was a timber country. The method of cruising depends on how close a cruise is wanted. If it is wanted very close, in a few acre tracts, he counted every tree. If it is wanted extra close, he took calipers and measured it; he didn't usually do that. He usually takes acre tracts and counts them and makes an average of every ten acres. There is a report goes in on ten acre tracts. His reports would show of these lands cruised by him for the Weyerhauser Timber Company, in these various localities, that he cruised about 25,000 feet to the acre, but that should be raised about forty per cent, because it was cruised quite a number of years ago, when they did not cruise closely. The price of these timber lands has advanced and the market has become more active, and cruisers are expected to, and do as a matter of fact, cruise more closely; they cut a great deal more closely. There is a great deal more timber cut off of an acre now than there was ten years ago, because timber is worth more. Stumpage has gone up and they cut it closer. The market value of stumpage runs in the neighborhood of a dollar a thousand. Different pieces and different localities will vary, but that is a fair average. The price

in the Columbia River country, known to the loggers of Portland and the timber buyers and mills of Portland and tributary to the Portland logging market, will run from $1.50 to $2.50 per thousand. He does not know whether logs produced from these timber lands that are tributary to the Columbia River market for Portland go clear to Astoria or not. He has never been down there. As far as he knows, they were logging what they could to take to Portland. He knows the price of stumpage for logs in the Nehalem country, in Tillamook County, that is, not the timber that has been logged to the present time, he couldn't, but the land that is on the market for sale he has knowledge of the stumpage prices. They quote stumpage in that section of the country, at the present time, at $1.00 a thousand, and they base their price on $1.00 a thousand stumpage, which is the market value. There is a good deal of timber in Lane and Douglas Counties, along where the Weyerhauser Timber Company has made its investments, which only has a speculative value at the present time. It is held for speculation. It cannot be utilized at the present time, and it depends somewhat on who holds it as to the market value, whether it is a large company or a small individual. Whereupon complainant objected to the testimony of witness as to the character of these lands within the limits of these grants, as incompetent, irrelevent and immaterial, and it was agreed between the parties that this same objection may be

deemed taken as to all the testimony of this witness relating to the character of the land within the limits of these grants, settlements thereon, and public land entires thereof. Whereupon, witness testified, that the timber in the Jenny Creek country, with which he is familiar, will run largely to yellow pine. There is quite a per cent of sugar pine down the Pokegama, and as one gets up and into the hills it runs more yellow pine, and some white pine.

Q. What is the character of the unsold lands in the Jenny Creek country? I mean the lands of the Oregon & California Railroad Company that are in the eastern part of Jackson County and in what we call the Jenny Creek country, if you know?

A. Why, the land there, it is practically all the same thing. There are a few little clearings along Jenny Creek. They are small. And there is some open country there, but the land is a timber proposition.

Whereupon, witness testified, that these lands of the Oregon & California Railroad Company in that section are chiefly valuable for timber. The unsold lands of the Oregon & California Railroad Company, belonging to that company in Jackson County and in the Jenny Creek country, marked in green on Defendants' Exhibit 259, are not very heavily timbered. The best of the timber has been sold for timber purposes. He accounts for the fact that the best timber has been sold, and is now held by other people, because these people were buying timber in there and they bought the best.

He cannot tell the year when the market for these railroad timber lands, in that section of the country, first became more or less active. The Weyerhauser people went in there about eight or nine years ago, possibly ten years ago. Under present conditions the unsold lands of the Oregon & California Railroad Company, with which he is familiar, in the Jenny Creek country and in the eastern half of Jackson County and western half of Klamath County, have no value for agricultural purposes. They would have some value as a grazing proposition. If one would limit grazing possibilities to a quarter section, if it lay aside of a piece of land that was suitable for agriculture on a creek bottom, it would be of some value as a grazing proposition. There is very little land there that could be used for agricultural purposes, in the unsold portion of this grant, with which he is familiar. He has never come in connection with a grazing proposition, but knows in a general way about grazing sheep over large areas of land. These lands of the company could not be utilized for grazing purposes in any other way than as stated by Mr. Kimball. Where the majority of the lands has been bought up in the eastern half of Jackson County and the western half of Klamath County, the lands that remain would naturally be poor soil, because the heaviest timber grows on the best soil mostly; that is invariably the rule. When one gets timber, he gets fair soil; when one gets poor soil, he gets poor timber. In that country down there where the yellow pine grows, is clay soil and shale, being broken rock. There is a good deal of it rocky. Some

places it is all clay.

Q. Is it or is it not productive after the timber is removed, or is it fit for anything, if you know?

A. Yes, there is people in all of that country there in different places, scattered settlers there, that have a little creek bottom, and they farm what they can, and work up on the sides. Sometimes they raise a little on that other land outside of the creek bottom; sometimes they don't.

Q. When you speak of these people living in there, you refer to small settlements in the little valleys and creek bottoms?

A. Yes.

Q. Are there any settlers on the even sections within the limits of these timber belts?

A. Along the river.

Q. But they are only on the lower streams?

Objected to as leading.

A. River and streams. After they get up the creeks they have to irrigate, but along the river bottom it is wet enough so they don't have to irrigate.

Q. What are these river bottoms? Are they small or large?

A. They are small tracts.

Q. When you speak of small tracts, how many acres would you speak of as capable of agricultural uses

even along the river bottoms?

A. Along the river bottoms; oh, there is possibly, in twenty-five miles there, or twenty miles, get outside of the timber area there—take it from Klamath Lake, the lower end of Klamath Lake——

Q. I mean within the limits of this grant, now—within the thirty-mile limit of the grant, and not including anything that is outside of the grant?

A. I don't know just where your grant comes, where it is located in regard to Klamath Lake.

Q. Look at the map, Defendants' Exhibit 259, Mr. Jacobs, over here. Here is Medford.

A. Here is Klamath Lake here. That is outside.

Q. This map shows the indemnity limits of thirty miles, and the place limits of twenty miles, and in green shows the unsold portion of the company's lands in Jackson County. Now, the question is, where are any settlements within the limits of that grant, on the even sections, if there are any, in the unsold portion?

A. Oh, there is two or three halfbreeds live in there.

Q. Two or three halfbreeds—pointing to what place, Klamath River?

A. Yes, I expect some of them is on that river.

Q. In the Klamath River country?

A. Yes.

Q. Well, now, the Klamath River has no valley,

except small and narrow?

A. Very small, narrow valley.

Q. How wide?

A. Oh, that valley there is in the neighborhood, probably—in that one place, two or three halfbreeds have probably got forty acres that they cultivate in there.

Q. Are there any settlements in the Jenny Creek country within the limits of this railroad land?

A. There are two or three families live where the old stage line crossed Jenny Creek, and upon the head of the creek there are some other people, right in here.

Q. What kind of settlements are they that they have?

A. They are keeping cows up in there. At the upper end of that Jenny Creek is a poplar growth brush, and it is quite easily cleared, that is, three or four hundred acres up there that could be cleared at a reasonable cost.

Q. Where do they range their cows?

A. They range unfenced land, the whole territory. It don't confine the cattle to their own range.

Q. Suppose a settler was to go in there and get a quarter-section of this unsold railroad land at $2.50 an acre from the railroad company, taking the quarter-section according to legal subdivision of forty acres in a string or in a square, whichever way it was best for him,

and he was expected to confine his way of making a living to that quarter-section, was not permitted to range his cattle or his stock over the unenclosed lands outside, and was expected to have this quarter-section used for every purpose that it could be used, either for grazing or for raising garden, or horticulture, or grain, or hay, or any agricultural or horticultural purpose, I wish you would state to the court, from your knowledge of these unsold lands, whether or not such a settler, under such circumstances, could make a living on any quarter-section there, or any considerable number of them?

A. Well, there possibly could be picked up a section of land on the head of Jenny Creek that would support life.

Q. That is to say, out of this total area, you think there might be as much as a section that could be gathered together?

A. I think maybe.

Whereupon witness testified that the balance is timber lands. There are places there where it is covered with loose rock, quite large, washed off, had very little timber on it. It has no value as agricultural land. He does not think that he stated the per cent, that he thought of the total which would be agricultural in the Jenny Creek country in the timber area, and not including lands that are comnig under the irrigation ditches, within the limits of the grant, in the unsold portion. Including land that might be irrigated, he thought that two per cent could be used for agricultural pur-

poses. He cruised some land in Coos County, and in the western part of Douglas County, and above Eugene; but he did no cruising on the Siuslaw River in the western part of Lane County; he might have on a little tributary to it, but not down on the river. He cruised some lands as shown on one of these maps, pointing to the lands southeast of the Umpqua Forest Reserve and west of the head waters of the Millicoma River, and his recollection is they were in Townships 23, 24 and 25 South, Range 10 West. He found that land to be rolling, quite well up, good elevation, and young growth of timber, that was about twenty years old, as he understood it. It was fir timber and he did not believe that this land was chiefly valuable for anything except timber. It was a timber proposition. He cruised most of the lands in Townships 21, 22 and 23 South, Range 1 West, and some in Townships 22 and 23 South, Range 2 West; that land is a timber proposition. Practically none of that land colored in red is suitable for agricultural purposes. When the timber is removed it may be suitable for grazing land. The even sections and the unsold lands of the railroad company in these various localities, where these lands of the Weyerhauser Timber Company are situated, is of the same general character and chiefly valuable for timber. Taking both localities, there is practically very little of these railroad lands that would be valuable for agricultural purposes. The soil in the Coos Bay country possibly might be a little better after the timber is off than it is up in 1 West; but the amount of agricultural land there included in

that timber area there, is very limited, what would be called agricultural land is almost a negligible quantity, probably one per cent. There is some of that timber land, when the country becomes settled up and the timber is worked off, could be worked into small orchards and grazing, and general farming; and he would say that sixty per cent of the land that he examined, possibly a little more, after the timber is cut off, extracted, cleared and grubbed, and the stumps blown out, could be used for fruit purposes, and grazing, and some agricultural purposes. Take the country right through there, $100 an acre would be cheap for clearing it; he does not think it could be done for that, but that would be cheap.

Q. Don't you know that the clearing of these lands that are heavily timbered, in this fir country, would run from not less than $100 up to as high as $300 an acre?

A. I am well aware of that fact.

Q. That is the fact, is it?

A. Yes, sir.

Q. How do they clear this heavy timber land of its stumps?

A. Do you mean after the logs are taken off?

Q. Yes.

A. With powder mostly. Sometimes they burn the stumps out with fire.

Q. Have you ever seen them use giant powder and

black powder mixed?

A. Why, there is a stumping powder put up by these powder concerns for that purpose—put up a stick for that.

Q. Do you know what it costs per acre in this heavy timber for powder alone?

A. Well, I have bought powder and blowed out an acre or two, but I couldn't tell you exactly the cost of it.

Q. Have you any idea as to an estimate of what is would cost on this heavily timbered land just for powder alone, to say nothing of labor?

A. I should think it would be worth $10 an acre.

Q. You don't know?

A. I have no actual knowledge of the present price of powder, nor a very clear recollection of what we paid for it at the time, quite a number of years ago.

Q. Well, now, let me ask you, suppose that an actual settler was to go and apply to the company for 160 acres of this timber land that you are acquainted with, within the limits of this grant, belonging to the railroad company, and would be permitted to buy it at $2.50 per acre, and settle on it intending to make it his home, and was expected to make a living on this 160 acres without the right of pasturing on the outside lands, but to put that land to any use that he could, I wish you would state to the court whether or not there is any considerable number, or any of these quarter-sections that

could be made a home of, from which a man could make a living under those circumstances?

A. There is very little of it. The Government land that lay contiguous to this land, that was taken for homesteads, had small patches of timber destroyed on it, and the people stayed there until they could sell the timber proposition and leave it.

Q. Now, then, applying your knowledge and experience to the quarter-section of railroad land that I speak of, what would be the experience of a man who would go in there and try to make a home on a quarter-section and be confined to it?

A. He would starve out.

Q. Why?

A. Because he couldn't make a living.

Q. Why couldn't he make a living?

A. Unless he had capital enough to start with. Take a man with $5,000 to $7,000, he might go into that heavy timber there and make a living.

Q. He wouldn't make it on the land; he would make it on the money he would put into it?

A. Yes, sir.

Q. Isn't it a fact he could go out in the valley and buy, with his $5,000 or $6,000, land cheaper than he could clear it up.

A. It would be the best proposition for him to do.

Whereupon witness testified that a large part of his

work of cruising these lands was done along about 1903 and 1904, something of that kind; and these timber lands began to move on the market about that time, which was about the time when the Weyerhauser people began to buy these lands. There was very little market for timber before the Weyerhauser people commenced buying on the Coast. They made the market. They alone made the market. The fact that they came in here and commenced buying extensively induced other people to come. The first two or three years after the Weyerhauser people were here, there were not so many other people buying, but the number of buyers increased rapidly after the Weyerhauser people began to buy, and the number is still increasing. These timber people come chiefly from Wisconsin, Minnesota and Michigan. There are places in these timber lands, in its native state, where there is considerable sword-fern or what are called brakes. The old burns are mostly grown up to ferns first, and then brush comes in. It takes a good deal of land, in its present state, to support an animal anywhere in that country. He knows of pea-vine on that land, and there are places, isolated places, where the condition would be favorable, there is pea-vine on it. But pea-vine does not usually come into an old burn. There is some pea-vine on some of this land. The pea-vine is good feed in the spring and summer; but there is not enough to make it of any particular value as a feeding proposition.

Q. There has been some testimony in this case that there was a good deal of grazing up there over these

lands, in the shape of pea-vine, for cattle, and things of that kind. Would there be grazing there on a 160 acres, or would a man have to have several thousand acres to graze over?

A. He would have to let them roam at will over the country.

Whereupon, on cross examination, witness testified, that he worked for the Weyerhauser people when they commenced buying here; and has worked for them since that time, six years steady. He has been employed by the Weyerhauser people since about 1900; and has worked, not all the time, since that for them. Some of the time he has done work for the Government on the Yakima watersheds. He has been cruising, making it his business, for the last fifteen years. He has been working in the timber business and cruising for thirty years; he is now fifty-four years old and has been in the timber business since he was twenty years old.

Q. These lands of the Oregon & California Company included in this map, so marked, that you have examined, have been noticed by you in cruising the Weyerhauser timber?

A. Yes. Wherever we go into a piece of timber we take notice of the surrounding country, the general formation and the amount of timber to be found.

Q. Other than the lands in the vicinity of the Weyerhauser tracts, you have not examined?

A. Only as we go through getting to those lands,

now, traveling through the country.

Q. Just as you would casually go through? You made no special examination?

A. Made no special examination, unless there was a big burn. If there is a farm or anything in the vicinity of the land we are buying, or a clearing, we make a note of it.

Whereupon witness testified that it would be hard for him to describe accurately, by sections and ranges, the lands of the Oregon & California Railroad Company he had examined. He has no memorandum of his work there. There is quite a lot of that work that was done under other parties. They had done a lot of work that does not show on that map. Defendants' Exhibit 316. Referring to Defendants' Exhibit 316 he has done a good deal of work in Township 40 South, Range 5 East. They had headquarters at Pokegama, and worked there, got their supplies there, and worked on Jenny Creek, and up Jenny Creek. Jenny Creek, as shown on Defendants' Exhibit 316, No. 1, runs south through Townships 39 and 40, Range 4 East. He has done work in Township 39 South, Range 5 East; and was cruising in 39-6 East at a place called Buck Lake, and was cruising in there. He has done a little work along the Klamath River in Township 40 South, Range 6 East. The Klamath River runs through that township diagonally.

Q. Yes, I will permit you, Mr. Jacobs, to refer to that memorandum book, refreshing your mind as to the locations.

A. Section 9, 21 South, Range 1 West; Section 10, Section 12, Section 18, Section 26, Southeast quarter of Section 28, Section 32, Section 34. That is all in that township.

Mr. Fenton: What township was that?

A. 21 South, Range 1 West. In Township 22 South, Range 1 West, Section 2—not all of the section—551 acres, Section 4, Section 6, Section 10, Section 12, Section 13, Section 18, Section 20, Section 22, Section 26, Section 30, Section 32, Section 34. That is all in that township.

Q. What township is that?

A. 22 South, Range 1 West. 23 South, Range 1 West, Section 4, Section 8, Section 10. That is all in that township. 22 South, Range 2 West, Section 4, Section 6, Section 8, Section 12, Section 26, Section 28, Section 30, Section 32, Section 34. That is all of that township I have cruised. And 23-2 West, Section 6, not all of it, 216 acres; Section 20, Section 22, Section 26, Section 28—480 acres; Section 32, Section 34. That is all of that township. 22 South, Range 3 West, Section 12, 211 acres; Section 22, 240 acres; Section 24, 280 acres; Section 26, 320 acres; Section 28, 80 acres. That is all of that township. 23 South, Range 3 West, Section 2, 121 acres; Section 6, 405 acres; Section 14, 40 acres; Section 10, 240 acres; Section 18, 320 acres; Section 22, 320 acres. That is all in that township.

Q. That book that you refer to, Mr. Jacobs, that you have taken these sections down, you have recently

inserted those?

A. Yes, I took them down.

Whereupon, witness testified, that the Weyerhauser Timber Company gets a water power site once in a while, but its business is timber and lumber, and it is not engaged in agricultural pursuits, or acquiring agricultural lands for the purpose of exploiting them or of engaging in farming. He does not think there are much cheaper methods of clearing lands than blowing the stumps; that is the cheapest method there is of clearing land. One cannot haul them out as a stump there, but will have the dirt to get off the roots, and that costs about as much to get rid of the stump as it does to get it out of the ground, it has to be dug out. As a usual thing, if the land is any good, it is clay soil, and one has to get that off the roots before they will burn. If they are shot out it is clear and it is all ready to burn. They pull stumps, with stump-pullers, and use donkey engines quite extensively, with pulley blocks; but take fir stumps and it is not a successful proposition. There is a char-pitting method, and also boring and burning stumps. He has seen machines for this purpose, and that is another method that is used. They have devised during recent years, a number of new methods of removing stumps from the land and clearing them, but contractors clearing railroad right of way all hang to powder, and use the cheapest method there is known. In clearing for railroad purposes powder is used on stumps to remove the stump. It might be used to remove a log,

too, but not to remove the dirt; the way the railroad contractors shoot the stumps off, it doesn't blow the dirt right off the right of way; and he doesn't think the use of powder has anything to do with blowing the dirt off the right way. He has taken stumps out in street work; during the hard times in 1892 and 1893, they did some street contracting, and that has been his experience, although he has cleared lands too. He never did very much of it in this country for agricultural purposes. They did not have any serious difficulty with timber where he was brought up on a farm in Wisconsin, on the Mississippi River. The timber was scattering, and the stumps, they let stay in a good many years, because they could plow right along on their burns. The country was a hardwood proposition, a different proposition from this. It was what is called a hardwood country. Most of the clearings that he has seen in the western portions of Oregon and Washington, and he has seen a good many in the valley, were in vine maple, some alder, and timber of that kind. There are spots where they have got into the fir timber, but the majority of the farms that were cleared are not fir timber. From present evidences in the Willamette Valley a good deal of it was covered with a dense undergrowth, but he would judge from the looks of it there was a good deal of open country, too. In testifying concerning these lands he has referred to their present condition, as to their agricultural possibilities, with the timber on them. A burn does not necessarily kill the soil; that depends a good deal on the condition of the ground at the time of the burn and of the

timber standing on the ground. There will be a few small isolated places where the soil will be destroyed, kind of vitrified; but that is rare, and it does not apply generally. He has never been employed by the Southern Pacific Company, or the Oregon and California Railroad Company, with reference to their lands. This suit is the only thing he has ever had to do with them. He has cruised over a lot of railroad lands; that is, he took preliminary runs through them for the Weyerhauser people; lands that they did not buy, he just made a casual examination of them generally, to see whether they wanted the lands at the price. The value of these lands have constantly increased during the years buyers have come in, and the timber and land have both increased in value. He does not know what the Weyerhauser timber holdings are in Oregon, and would not like to state approximately what they are; he has never figured it out himself. The greater portion of these timber lands have been obtained from the railroad company and through the use of scrip in the even sections. The Northern Pacific Railway Company located the timber lands in Oregon and Washington with Northern Pacific scrip and then sold to the Weyerhauser people. The Weyerhauser people did not use any scrip, they bought the land; they paid more for the scrip land than they did for the patented land. Whereupon on redirect examination witness testified, that he did not read the description of all lands that he had cruised and as shown on his memorandum; he has some more, and practically the same conditions would apply to them. Whereupon, on recross ex-

amination, witness testified, that the lands he referred to are in Coos County, and that he cruised in Section 2-24 South, Range 10 West, 601½ acres; cruised 578 acres in Section 4-24 South, Range 10 West; Section 5 of the same township and range; Sections 6, 7, 8, 10, 12, 14, 17, 18, 19, 20, 22, 24, 26, 28, 29, 30, 31, 32, and 34, Township 24 South, Range 10 West; Sections 2, 4, 7, 8, 10, 12, 14, 18, and 24, Township 25 South, Range 10 West. The divide there is what they call the North Fork of the Coos, between that and Coos Bay. That is on the Pacific Ocean divide; the water runs into the Pacific Ocean or Coos Bay. The soil in those townships is not so good as it is further south. It would be agricultural land when the stumps are out, quite a per cent of it, but it is not as good as it is further south, around the south part of the bay or harbor. Whereupon, on redirect examination, witness testified, that there are a few people who went in there along the bottom lands along the creek, took up homesteads and lived there, had some cows, and made a living selling butter; that was not timber stuff; that was vine maple they settled on down on the little streams. No one wants a homestead in the timber land there as a farming proposition. There are some homesteads in the timber lands, he thinks, in there; they got some vine maple land, that is easily cleared. There are no homesteads in that timber land where he was. The even sections there were scripped by the Northern Pacific Railway Company. Timber men own, generally speaking, that timbered land now, where the title has passed out of the Government.

Whereupon W. T. GRIEVE, called as a witness on behalf of the defendants, being duly sworn, testified; that he is thirty-five years old, is assessor of Jackson County, has lived in that county since 1889, and has followed the business of farming, running stock, timbering, and official business since he was fifteen or sixteen years of age. Between thirteen and fourteen years ago he was deputy assessor, and after that he went to farming again; and for the last four years he has been the main assessor of the county. His father, John Grieve, was assessor when he was deputy, and he was deputy two years, and is now in his fourth year as assessor. He has lived in Jackson County about twenty-three or twenty-four years, and is acquainted with the unsold lands of the Oregon and California Railroad Company in Jackson County. The first introduction he had in regard to these lands was the second year—he would not swear positively whether it was the first or second year when he was deputy assessor —William S. Crowell up to that time was the Probate Judge of Jackson County—his father raised the assessment on all the Oregon and California Railroad lands at that time. He was acting as deputy, accompanied with a notary public, and rode through all the out districts even after the assessment was made. He had to ride the out districts, that was his part of it, to ride the out districts as deputy assessor. After this was done Judge Crowell ordered him to take a notary public and go among the farmers in these railroad lands and get affidavits from them as to the actual value of this particular tract of land, which he did. He refers to a con-

troversy between the company, in 1896, when Judge Crowell was County Judge, which resulted in some litigation as to the assessment of the land grant in Jackson County. He was instructed by Judge Crowell to procure this information. After he was deputy assessor, and prior to that time, he had always lived the bulk of the time, the bulk of the time operated in the out districts—that is, out along the creeks and rough districts. He ran cattle on these lands. He had examined these lands for his own personal information; and had located timber lands through the county; and also since becoming assessor, he had looked into the matter of this land business very carefully. He could not state that he had been over every section of these unsold lands in Jackson County, but he had been over every district, and every portion of each district where there would be any question; that is, he has practically seen all of it. To which testimony of the witness complainant objected as incompetent, irrelevant and immaterial, and it was agreed that this same objection should be deemed as taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof. Whereupon witness testified, that in ascertaining the value of these lands, in looking at it, considering it, and living there, he has been able to ascertain the general character of these lands, what it is good for and not good for, what is covered with timber and what is not covered with timber, etc. He does not know that he can state just exactly how many acres there are of this grant, if any, that

are practically of no value, and without any timber values on them, but if he remembers right they figured that up pretty close, and he believes that the amount was something like one hundred and ninety to one hundred and ninety-two thousand acres, something like that, close to that, that they considered worthless, as far as any farming was concerned. In certain districts of the county there are steep mountains, which are very steep, especially on the Applegate side is the steepest, and there is no timber on a lot of that; it is too steep for farming, unless one would terrace, and it would be impossible to do that; then it is very rocky, they have got some very rocky land there. On the Applegate side there is what is called chaparral on the lowest hills there, and there is some live oak shrubs, but no large live oak trees; there is this kind of brush, and live oaks and laurel, and manzanita; higher up there is the red rooting brush, and what is sometimes called slickleaf, and snow brush, and there is some vine maple. These worthless lands, of which he speaks, are all of a volcanic nature. There has been at times a good deal of mineral prospecting, within the limits of this grant, in Jackson County, and that is very true in regard to the west side of Jackson County; there is one mine in Township 31, Range 1 East; outside of that, on the east side, there is but very little; in fact there is no mining on the east side of Jackson County.

Q. What working mines are there on the west side of the county and anywhere within the limits of this grant, on the even sections or elsewhere, or on the rail-

road sections, where they have land that is unsold?

A. They are mining some, I guess, on railroad land that has not been sold; but I don't think there is any big operating mines.

Q. You mean prospectors?

A. Yes, sir.

Q. What is it called? What kind of mining is it called?

A. Well, pocket-hunters, they call them. Of course, there is several ledges of quartz. It is quartz and placer. There is the Opp mine. That is quartz. They have got a stamp-mill there, I believe ten stamps. There is Braden mine, close to Gold Hill. That is one of the oldest mines they have there. Then there is several small quartz mines around close to Gold Hill. Then in above Woodville they have mostly all placer, on what they call Jump-off-Jo Creek. Then on Sterling Creek they have a placer, and on Forest Creek they have a placer. And on Footes Creek, at the mouth of Footes Creek, there is a dredge known as the Champlin dredge, and on the head waters of Foote Creek they have small placers.

Q. What kind of mines are these—what mineral?

A. Gold.

Q. These pot-hunters, or pocket-hunters for gold, have any of them succeeded in locating any claims that they have developed and worked?

A. That is, you mean?

Q. Commercially, I mean.

A. You mean on the grant lands, or on any lands?

Q. On any lands on that side?

A. Well, the pocket-hunter, you know, he digs out a pocket, and that is about the end of it. They have succeeded in digging out some very rich pockets.

Q. These pockets, are they uniform, or are they transitory and scattered?

A. No, they are scattered.

Q. And do they last?

A. No, as a general rule, they never last. I never have known one yet to last.

Q. It is known, then, as a pocket mining country?

A. Yes."

Whereupon witness testified, that outside of the mining that may be in it, the only value of the remaining 251,000 acres would be for the timber there is standing on it, and possibly for what grass grows on it, that is, for grazing. The largest majority of the timber of this remaining land is fir; that is, the bulk of it. It will probably run, he should judge, taking it as a whole, the Oregon and California Railroad grant would not exceed twenty-five per cent pine, including sugar and yellow pine, which is above eighteen inches at the top. The balance of the timber would be red and yellow fir. The best portion of the timber is situated in the Jenny Creek, the Big Butte, Elk Creek, Evans Creek, Footes Creek,

and there is some on the head water of the Applegate, but it is considered that Applgate timber is rather light. For the districts that he has stated, he would be safe in saying that the timber would average 20,000 feet to the acre; and that is of commercial value, and is what he has testified to. It would be very hard to say, taking the whole thing, valleys and all, within the limits of this grant, referring to the 251,000 acres of the unsold portion, covered more or less with timber, what per cent in its present state could be used for any agricultural or horticultural purposes; and the reason why, is that to make it farming land it would necessitate the removal of some of the timber off of it. There are places that one would find openings, natural openings, small openings, but to go in and pick up a quarter section and take it as it comes, one would have to remove timber to get any kind of farming land and farm it. Taking the possibilities of this 251,000 acres on an average, as to each quarter section, if the timber was cleared, the land adapted to agricultural use, or that could be used for agricultural purposes, would not exceed one-eighth, which would be about twelve per cent. These agricultural parcels would be in spots. Take the Big Butte district, there is probably a township, close to a township, in there, that one might say would be all farming land, if the timber was off of it; that is to say, if the timber was cut and removed and the stumps grubbed out, could be utilized for some farm purpose; grazing, or vegetation, or grain, or something of that kind. It is not alfalfa land, it is a clay subsoil there. They plow it, but

it is not a success, it is not alfalfa land, that high land; but other stuff, they have grown hay and grasses on it.

Q. These small agricultural spots, where are they with reference to these streams that run up into the foothills and mountains?

A. That is, you mean, whether they are right along the streams?

Q. Yes.

A. Or whether they are scattered away from the streams?

Q. Yes, that is what I mean. What is your knowledge on that subject?

A. Well, the bulk of them, the large per cent of the land that would do to farm, of this character, probably could all be put under water, the largest portion of it could be put under water, but it is not along the streams. It is scattered away from the streams.

Q. It would have to be irrigated, then?

A. Yes, it is necessary to irrigate that land. Of course, it grows crops without irrigation, but then it is better to have irrigation.

Q. Something has been said in this testimony, or in the record in this case, by some of the witnesses, about grazing over these lands during a portion of the year. I want to ask you this question: Suppose that the company should sell to some so-called actual settler under the act of April 10, 1869, at the rate of $2.50 an acre, a quarter-section of this land in this 251,000 acres, and

the settler should have it in legal subdivisions, not necessarily in a square, but in forties, and he should be confined to making his living, by grazing the land or putting it to any useful purposes, on his 160 acres, I will ask you to state to the court whether or not such so-called or pretended actual settler, under these conditions, could or could not make a living for himself or family on this 160 acres?

A. He couldn't do it unless he had something else to fall back on to make a little money on; he coudn't go on and make a living at first.

Q. What do you mean by having something else to fall back on?

A. Some income. He coudn't move onto a quarter-section there and begin to make a living for him and his family at once—he couldn't do it.

Q. Why, Mr. Grieve, couldn't he do that?

A. Because the property is not in condition to do it. It takes too much to clear it. You have got too much to go through. In fact, I have tried it—I know it can't be done.

Q. Now, something has been said in this case about large sheep drivers or sheep owners, owning from 1500 up to 20,000 head, leasing these lands, or leasing lands of this character, and ranging over these lands, over a section of four or five hundred thousand acres. Now, what is the fact, if you know, as to whether these lands could be used in that way, and how large an area would

have to be grazed over in order to be practicable?

A. It would depend, of course, altogether on the bunch of animals you had in your herd. There is in Jackson County what we call spring range, which gives out—that is on the low foothills; that gives out about May—the last of May or first of June, not later than that. Then they have to drive to the higher lands for their summer range. Now, they would have to range over quite a territory. With the brush and timber there is on this land, it is a very hard matter to state just the number of acres that it would take to support an animal in that country; because there are places that there are openings in, of course, that there would be no brush, and it would be all grass; and then in the brush there is pea-vine and stuff, and there is a large amount of grass that grows in there, that is good feed. And there's some districts—in the white pumice district there around Prospect, there is absolutely not a spear of grass grows on it for a township.

Q. Well then, as a practical question, a man who would want to use this land for grazing purposes profitably, would want for, say, 1000 head of sheep, approximately, about how many acres during the season that he could range them?

A. This land is not like the Government forest reserve. There they go right into the summits of the mountains in the reserves, and it would take thribble the amount of this land that it would on the Government reserve land for the same amount of sheep.

Q. Why is that?

A. Well, you have got more timber to contend with, for in the Government reserve, when they lease a man their grazing lands, it is all in these glades, these open glades, on top of the mountains, in the larch timber or in the white fir, as we call it, and there isn't a man in Jackson County that runs sheep but what goes to the high mountains for his summer range onto the reserve. I don't know of a man in Jackson County, outside of one in the south that has his residence in California—he has the Weyerhauser people's tract rented there, and he grazes sheep on that; there is some of that in Jackson County—outside of that, there isn't a timber man in Jackson County that has got his timber lands under a lease to any stock raiser, because there is not grass enough to pay a stock man to pay the price that they will want for the range.

Q. The Weyerhauser Timber Company, I understand, get at the rate of five cents an acre from sheep men on their lands, under their lease, per annum. That would be $8.00 for a quarter-section.

A. Yes.

Q. Have you any knowledge of any of these lands within the limits of this grant being leased, or some quantity of lands being leased for grazing purposes at all?

A. No, I have not.

Whereupon, witness testified, that ranchers or far-

mers who happened to live along these little creeks pastured these railroad lands, but they did not, to his knowledge, there is not one of them, who pays any rental for any grazing lands. The railroad company owns the land and pays the taxes, and these ranchers have the range. The fine fruit country in Jackson County, famous for Rogue River apples, is located in the heart of the Rogue River Valley. The meridian line cuts the fruit district, the main valley, very nearly in two. That fruit district runs up from Ashland to Woodville. Ashland, he believes, is in Township 39 South, Range 1 East, and Woodville is in Township 36 South, Range 4 West; that runs diagonally there across. He supposes Rogue River Valley covers probably, well take and consolidate it, would probably be four or five townships. The valley is about fourteen miles wide in the widest place, and it narrows up about Ashland, a little south of Ashland, he supposes, it would be, not over three or four miles wide there.

Q. Now, what is the fact, if you know, Mr. Grieve, about there being a range of bare hills, that have no timber and not much of anything else on them, east of the valley, on the east side of the Rogue River Valley?

A. That is what we call the foothills.

Q. Yes, what is that covered with?

A. That is covered with white oak trees, and these scrub black oaks. They are all scrub trees—there is no merchantable oak. And poison oak, and chaparral, and stuff like that, that comes in.

Q. I have been riding through on the train, and didn't see any fruit on there.

Mr. Rabb: I object to the attorney testifying.

Q. I am making a question out of it. What is the fact about that?

Mr. Rabb: Objected to as leading also.

A. Those low foothills there, there is white oak, and there is black oak, and poison oak brush, and chaparral, and manzanita on them, and there is no particular value to them.

Q. The fruit lands, then, as I understand, are not situated on that character of land?

Objected to as leading.

A. In some cases, there is some of those hills are the same character of land as they are a little lower down. They run those orchards up about as far as they can get them on those foothills, and that is the same character of soil as there is on top. But you couldn't farm it there—it is too steep and rocky.

Q. In the west side of Rogue River Valley, around Jacksonville, what is the situation as to the character of land in the foothills, beyond the valley part?

A. That is a free soil,, on the west, around Jacksonville, is a free soil; and take it due north of Jacksonville, it is granite formation, and they even get—they have a quarry out there, and they are getting some granite out of there. And take it around Jacksonville and south of Jacksonville, the soil is free and red, a red

soil. And take it east of Jacksonville, between Jacksonville and Bear Creek, that is the black loam land, pretty near all of it, except some spots. It is very spotty.

Q. This that is east of Jacksonville, and towards Medford, and on either side of that space, isn't that part of this good fruit land?

A. Yes, sir; the best there is in Rogue River Valley.

Q. Yes. Now, I have been told, and I think that it is generally known, that some of this fruit land around Medford, when the trees are six and seven years old, and are set out to Yellow Newtowns, and what is the other standard?

A. Spitzenberg.

Q. Red Spitzenberg apples, that the market value of it is $1,000 an acre, or like that. What is the fact about that?

A. That is very true. They have sold for that, and they even have sold for $2,000 an acre, from $1,000 to $2,000 an acre. The Burrell people sold at $2,000 an acre.

Q. You refer to the Burrell Investment Company, of Portland?

A. Yes.

Q. Where are the lands of that company situated, that they have devoted to fruit culture?

A. They are situated in Township 38, Range 1 West, and maybe in 1 East. I don't know whether it is in 1 East or not.

Q. Are they in the valley?

A. Yes, sir; they are in the main heart of the valley. They are south of Medford.

Q. How far from Medford?

A. About four miles.

Q. How long has the Rogue River Valley been settled, from your knowledge, and from your knowledge of the history of that country?

A. I cannot give you the exact dates on that, but it is one of the oldest settled portions of the State of Oregon. Jacksonville, I believe, is considered among the oldest towns in the state.

Q. I call your attention to this map, Defendants' Exhibit 259, which shows in yellow body, Gold Hill, Tolo, Sams Valley, Beagle, Eagle Point, Agate, Medford, Willow Springs, Jacksonville, Phoenix, Talent, Ashland, and, according to the legend on this map, all that country in yellow consists of lands lost to the grant by adverse entries, that is, by donation land claim settlements, homesteads, or other settlements, in the early days. State to the court whether or not that yellow field there practically represents all of the agricultural and fruit lands of Jackson County?

A. It does.

Q. I notice on this same map Applegate Creek, which heads west of Jacksonville, and appears to run northeast out towards Wilderville, and then finally gets into the Rogue River, I think, somewhere near Grants Pass, does it not?

A. Yes, it heads due south of Jacksonville.

Q. I notice along that stream a body of yellow shown on this map. State to the court whether or not that yellow represents practically all of the agricultural land along the Applegate Creek, and Williams Creek country.

A. It does.

Q. I call your attention to the fact that on this map along Butte Creek, and Lake Creek, Little Butte, and up Antelope Creek, this same yellow field extends shown on this map. I will ask you if that does not show substantially all of the valley land or agricultural land along those streams in Jackson County?

Objected to as leading.

A. It does.

Q. I notice in this large yellow field in Jackson County occasional fractional sections of land in green, which on the map is supposed to indicate, according to the legend, the unsold lands of the Oregon & California Railroad Company, in some places there would be a forty and other places a quarter-section, other places almost a section with a 40 out that is yellow. What is the character of that land that is situated thus in the low

lands of the Rogue River Valley, or in that yellow field? What kind of land is that—this unsold railroad land?

A. There is some of that, one piece right here, around here at the mouth of Bear Creek, that is first-class stuff.

Q. How much is there of that?

A. Well, it seems to me—I cannot give you the exact acreage in that farm, but it seems to me it runs about 200 to 240 acres, something like that. That is under lease to somebody there—the company owns it. Now then, this, after you get back here on this side——

Q. Pointing to the east side of Phoenix?

A. Yes, this is the east side here. This is sticky. This is all sticky land here.

Whereupon, witness testified, that he means by sticky land that which is generally called gumbo; that is, land that is all run together. One cannot walk through it, it all sticks to his feet when it rains; it is not free soil. They farm this land. The desert is between Eagle point—Agate is right on the edge of the desert, which extends from Antelope Creek down into the forks between Bear Creek and Ashland. That desert is hard pan land, and is used for the purpose of fruit. They are developing it now. The Rogue Lands, Incorporated, have begun to develop it; it has never been cultivated before in the main desert, only on the edges. This company has run up in the desert and they are developing

it by putting water from Little Bear Creek. They have brought a ditch from Little Bear Creek, and put in a ditch there and are selling water to the farmers. They take a drill and drill down through the subsoil of rock on that desert there, and put in two shots of giant powder down about eight feet, blowing it up, crushing up that rock, and when they do that they put in a tree. Then they went to work on about probably an acre and a half there, blasted it all over, ever so often, and planted alfalfa on that. It has not done very well even then, but it is growing. They got a stand, but he does not think it is a success, the alfalfa part of it; it may be, it has not shown. There is lots of that yellow field, speaking of Defendants' Exhibit 259, that is spotted. The reason why it won't make good fruit land is that they have the hard-pan to contend with. Hard-pan is land that is cemented together in strata. There are two stratas there that they have got to go through, and that is the reason they went eight feet. There is only about three, he guesses, right under the surface there is a hard-pan, about eight inches down; and then about four or five feet, five to eight feet, he thinks, that the other stratum runs; and they blasted through the first stratum, which was not a success; and then they had to go down through the second. It is a Spokane company that obtained this water-right on this desert, and brought up the desert and is trying to develop an irrigation section to be sold; they bought that several years ago and have been developing it with this water on the land in the dry season, setting their trees, and then they have been sell-

ing it. They are just young trees; they had one orchard there, the first one they planted, they went through the first stratum of this bed-rock, or hard-pan, and they pulled that all out; it was not a success; the trees died. There are some good fruit lands around Eagle Point; they grow Yellow Newtown and Spitzenberg apples there, principally along the creeks. He cannot state exactly how many carloads of these commercial apples are shipped annually from the Rogue River Valley; they expect this year to ship out a thousand carloads, but they won't do it. They are shipping some to European countries and some to New York. They depend on New York and Chicago. He cannot state definitely in regard to the amount of sales of pears, the number of carloads; it would only be hearsay, but he knows that there are a lot of pears shipped, and they are the best there is, they claim. He could not state what they get f. o. b. for their pears at Medford which are shipped to New York. The market is largely New York and Chicago. He does not know exactly what they get for the Yellow Newtowns and Spitzenbergs shipped to Chicago and New York and elsewhere in the east, but he believes that they figure close to four cents a pound, which, figuring fifty pounds to a box, would make close to $2.00; about $2.45 to $2.50 somewhere close there; it is close to four cents a pound or better. These apples and pears go out on the Southern Pacific from Medford; that is, they are started from Medford on the Southern Pacific, and are shipped from Medford to New York by rail; that is, to New York and Eastern

points. He cannot testify what the grower gets for delivery on the car. He can tell what he is doing with fruit. He purchased apples last fall from a man in Ashland by the name of Barnhard, who charged him four cents a pound, figuring fifty pounds to the box, and who said he was charging him just what he got at Ashland. There are a lot of peaches grown at Ashland, and some grapes grown at Jacksonville. There are some vineyards there; there are no large vineyards; there are some that they make a commercial business of at Jacksonville and Medford. There is one man at Medford by the name of Demmer. They are annually shipping considerable peaches from Ashland; and they have now planted peaches more extensively all over the valley for what they call fillers. That is where a man sets out an apple and pear orchard, he has to set his trees so far apart; they figure that there will be about seven or eight years wait on an average for pears; they put these peaches between the trees, and in three or four years they come into bearing; then when the apples and pears come into bearing then they grub out the peach trees, so they are called peach fillers. They have not irrigated in the Rogue River Valley until very recently, but they do now. They have put water onto the Snowy Butte Orchards. It makes considerable difference as to the fertility and production in the Rogue River Valley land, whether one has water. The blacksoil, or black land, in Jackson County, between Jacksonville and Central Point, is what they call the alfalfa land; it grows anything, but that is alfalfa land; it is very deep soil,

and has no clay subsoil. Some of it has been set to orchard, but they have found, as a general rule, that land is too strong, and makes too much wood growth; and in some cases, such as the Snowy Butte Orchards and the Hanley Orchards, they have grubbed some of their orchards up, the orchard is subjected to blight, and they have put it back into alfalfa. They ship wheat into the Rogue River Valley. They do not produce any wheat there. They ship in all the grain that is used there. They ship in barley, oats and even potatoes. There was more grain there prior to the time when they went into fruit, but they have always shipped in grain, instead of shipping it out. Whereupon, on cross examination, witness testified:

Questions by Mr. Rabb:

Q. Mr. Grieve, do you remember having a conversation with Harry E. Laughlin, Special Agent of the General Land Office, March 16, 1912, at the court house in Jacksonville, Oregon, with reference to these lands?

A. What is the name?

Q. Harry E. Laughlin.

A. There has been agents in there, but I cannot recall that name. There has been several agents in there. There has been Government agents and railroad agents, you know, in there, but I haven't kept track—first one comes and then the other— and I don't know, I couldn't state as to that, as to the man's name. I wouldn't want to swear to the man's name.

Q. I hand you this document, Mr. Grieve, and ask you to examine it and state whether or not that is an affidavit executed by you on the date that it purports to have been executed.

A. Here is one here 5 East, they have got it. That don't include that. This is my signature right here. I remember this. There must have been a mistake when they put that 5 East down there. I don't remember any 5 East being there. This 5 East here—I don't know nothing about that.

Mr. Fenton: How is that?

A. There is 5 East marked here.

Mr. Fenton: The question is, did you sign the document?

A. Yes, I signed this document; but this 5 East—I don't know anything about that.

Q. This document that I have handed you has your signature on the margin of the first page.

A. Yes.

Q. And at the end of the statement?

A. Yes.

Q. In this document, is it not stated——

Q. Is it not stated, "I. W. G. Grieve, a citizen of the United States, 35 years of age, residing at Jacksonville, Oregon, where I am County Assessor of Jackson County, Oregon, being duly sworn, depose and say: I have been county assessor for about three years last

past. I have lived in Jackson County, Oregon, for the past twenty-four years; and prior to becoming county assessor, I spent about seventeen years in the stock business, and about four years in locating people on Government land. During my residence in Jackson County, I have lived at Central Point, Prospect, Jacksonville, on Little Butte Creek, on Big Butte Creek, and elsewhere. I have ranged cattle on almost all the out-districts of said county; and through ranging cattle, locating people on lands, hunting, performing the work of county assessor, etc., have become very familiar with the lands in all parts of said county. I have had experience in farming; and by having lived most all my life in farming communities, have become familiar with agricultural conditions, particularly in said Jackson County, Oregon. I am very familiar with the lands now owned by the railroad in the following described townships; and I estimate the number of quarter sections thereof which are suitable for settlement purposes, that is, which would support a family, at the percentages stated below:

"Those which drain into Trail and Elk Creeks and the upper Rogue River, namely, Tps. 32 S., Rgs. 1 W., and 1 and 2 E. W. M.; Tps. 33 S., Rgs. 1 W. and 1, 2 and 3 E. W. M.; Tps. 34 S., R. 1 W. and part of 1 E., and 35 S., Rgs. 1 W. and 1 E., 20 per cent.

"Those which drain into Big Butte Creek, namely, Tp. 34 S., Rgs. 2 and 3 E. and part of 1 E.; Tps. 35 S., Rgs. 2 and 3 E., and part of Tp. 36 S., R 3 E., 40 per cent.

"Those which drain into Little Butte and Antelope Creeks, namely, Tps. 36 S., Rgs. 1 W. and 1 and 2 E., and part of 3 E.; Tp. 37 S., Rgs. 1, 2, 3 and 4 E., 20 per cent.

"Those which drain into Evans and Sardine Creeks and tributaries, namely. Tp. 33 S., Rgs. 2, 3 and 4 W.; Tp. 34 S., Rgs. 2, 3 and 4 W.; Tp. 35 S., Rgs. 3 and 4 W., and the portions of Tp. 36 S., Rgs. 3 and 4 W., which are north of Rogue River, 20 per cent.

"Those drained by Sams and Beagle Creeks, namely, Tp. 35 S., Rg. 2 W., and part of Tp. 36 S., R. 2 W., 50 per cent.

"Those which drain into the Rogue River on the south, and into Bear Creek as far south as Ashland, namely, part of Tp. 36 S., Rgs. 2, 3 and 4 W.; Tp. 37 S., Rgs. 1, 2 and 3 W., and part of 4 W., and Tp. 38 S., Rgs. 1 W. and part of 2 W., and 1 E., 50 per cent.

"Those which drain into Jenny and Dead Indian Creeks and those south of Ashland, which drain into Bear Creek, namely, Tp. 38 S., Rgs. 2, 3 and 4 E.; Tp. 39 S., Rgs. 1, 2, 3, 4 and 5 E., and part of 1 W.; Tp. 40 S., Rgs. 1, 2, 3, and 4 E.; Tp. 41 S., Rgs. 1 2, 3 and 4 East, 30 per cent.

"Those which drain into Applegate Creek and its tributaries, namely, part of Tp. 37 S., R. 4 W.; Tp. 38 S., Rgs. 3 and 4 W., and part of 2 W.; Tp. 39 S., Rgs. 2, 3 and 4 W., and part of 1 W.; Tp. 40 S., Rgs. 1, 2, 3 and 4 W.; and Tp. 41 S., Rgs. 3 and 4 W., 15 per cent.

"Taking all the quarter sections together which I have estimated above as suitable for settlement purposes, I estimate that they will average twenty acres of plow land to the quarter section; and I know that practically all of the railroad lands in the territory above mentioned is good grazing land.

"I consider the above estimates as conservative; and I know that the climatic and soil conditions of the lands in Jackson County, Oregon, are favorable for agricultural purposes, and fruit growing."

A. They have got there, they have got my initial wrong in the beginning there. It is all lead pencil—I don't know. I know that is my signature to it.

Q. That was a correct reading of this document, wasn't it, Mr. Grieve?

A. Yes, sir.

Mr. Fenton: The document speaks for itself, and is the best evidence.

A. That is all right—I don't deny. But this "W. G."—that is not my initial. I didn't notice that. I couldn't swear whether it was "W. G." or "W. T." at that time that he put down there. Of course, this is my signature here. I remember the document.

Q. The statement that I read was contained in this document?

A. Yes. We talked that over—I cannot recall the man's name. There has been so many in there, that I cannot—I don't know now.

Mr. Fenton: The question is, is that you signature to the document?

A. Yes, that is my signature. There is no question about that.

Whereupon complainant offered said affidavit, referred to in the testimony of the witness, as part of his testimony, marked Government's Exhibit 120; to which defendants object, unless offered for the purpose of impeachment. Whereupon said exhibit was received in evidence, so marked, and is hereinafter set out and described, and made a part of this statement of the evidence, and identified as such. Whereupon on redirect examination witness testified:

Q. In whose handwriting is this statement that you signed, Mr. Grieve?—Government's Exhibit 120.

A. It is the handwriting of the party that was there at that time. I cannot recall his name. What did you say his name was?

Q. Government's counsel didn't read you the name. Did you hear the name?

A. Yes, sir; I heard the name. He told me the name there, but I cannot recall it.

Q. Harry E. Laughlin.

A. There has so many been there.

Q. "Harry E. Laughlin, Special Agent, G. L. O."—General Land Office. The 16th day of March, 1912. How long were you talking with Mr. Laughlin

before this statement was written?

A. If I remember right, the gentleman that came in, whether his name was Laughlin or not——

Q. That doesn't make any difference what his name was.

A. I cannot swear. He came in in the morning—I believe it was in the morning he came in, or some time—I think that I was busy at that time—and he wanted to know if I would give him some idea in regard to the O. & C. Lands; and he came back.

Q. How long a time were you talking to him?

A. I think he came back in the forenoon. I don't suppose he was in there—he wasn't in there to exceed an hour, I don't believe, if I remember right. It wasn't long, anyway.

Q. Then how long after this conversation with him, which you think may have been an hour, was it that he came back with this affidavit?

A. That was when we had the conversation. He came in and asked me, and I told him he would have to come in later, if I remember right, and then he came back; and whether he wrote that document there or not, I cannot state, or whether he had it written out when he came in.

Q. Whose language is used in this affidavit? Whose language is this that is used there—his or yours?

A. That in regard to the townships and ranges, I

think it is mine.

Q. I mean, whose is the other languarge, aside from the mere description?

A. He wrote that out, if I remember right.

Q. For instance it says here, using the words "suitable for settlement purposes, that is, which would support a family." Now, whose language is that?

A. Well, he wrote the document. He asked me them questions as he went along, you know, and of course he was the one that wrote the document. As to whether I put that in there, I couldn't swear to that.

Q. Well, what do you mean—what did he tell you was the meaning of land that was suitable for settlement purposes, if he did tell you?

A. That is, he wanted an approximate estimate on it. I told him I couldn't be exact on that, because that is something that was very hard to get at. We had no cruise.

Q. What do you mean by the use of the words "settlement purposes?" Just tell the court, in your own way, what you mean by that.

A. Well, that would be land that would actually be level enough to till, and it would be land that contained timber and everything, just as the land stands now, in its raw state. That was the information he wanted when he came in there.

Q. Did you believe land suitable for settlement

purposes would include timber land?

A. Yes, that included the timber land, that included all lands, that had everything on it; that is, as it is right today.

Q. What I am getting at, have you included in your definition of land "suitable for settlement purposes" lands that were timbered, but the timber of which could be cleared and grubbed and the land utilized in that way for settlement purposes?

A. Yes, sir; yes.

Q. Now, when you say, "Taking all the quarter sections together which I have estimated above as suitable for settlement purposes, I estimate that they will average twenty acres of plow land to the quarter section," you mean twenty acres of plow land after the timber is cleared?

A. Yes, sir; after the timber is cleared.

Mr. Rabb: Objected to, as the witness has previously testified that the statement related to the character of the land in its present state.

Q. Well, you mean in its present state with the timber on it?

A. Yes, with the timber on it.

Q. But you didn't mean by the words "suitable for settlement purposes," that a man would go out there and settle on a piece of timber land, and then make a living off of it just as it was, with standing timber on it?

A. No, no. It is simply that this could be—there could be this much plow land covered to a quarter section.

Q. That is, it is possible to obtain it by clearing the land; not otherwise?

A. Yes, sir.

Q. You don't mean that every quarter-section would have twenty acres of plow land on it? That is, twenty acres of land that had timber that could be cleared, that would be suitable for settlement or agricultural purposes—that every quarter-section would have that?

Mr. Rabb: Objected to as not a proper question.

A. No, that was as a lump sum. That was an aggregate. That was the question that was put to me at that time.

Q. Did this examiner, this special agent, tell you what he wanted this for?

A. I don't believe that he did. I don't believe that he told me. There has been so many of them there. There has been several in there.

Q. Did he tell you anything about this suit between the Government and the company, this man Laughlin?

A. I cannot recall that, because some of them have, and some of them have not. Now, if I met the man, if I met him face to face, I would know the man.

Q. And it has in this, "I consider the above estimate as conservative, and I know that the climatic and soil conditions of the lands in Jackson County, Oregon, are favorable for agricultural purposes and fruit growing." Now, what does that mean? All the lands, of everybody in Jackson County?

A. That means all the lands—that means climatic conditions in Jackson County.

Q. And includes the Rogue River Valley?

A. Includes all of it, yes. It is stated there—the townships and ranges given there even in the valley.

Q. I understand; but he uses the expression, and makes you use it, "I know that the climatic and soil conditions of the lands in Jackson County, Oregon, are favorable for agricultural purposes and fruit growing. Did you mean by that statement to include all the lands in Jackson County, including the Rogue River Valley?

Mr. Rabb: Objected to upon the ground that counsel is assuming facts not shown by the testimony of the witness.

A. Yes, sir.

Q. Were you asked by the attorneys or counsel for the Government, or any one representing the Government, to be a witness in this case?

A. No, I was not.

Whereupon, W. E. BALL, called as a witness on behalf of defendants, and being duly sworn. testified,

that he resides at Toledo, Lincoln County, is forty-eight years old, is county assessor of Lincoln County, and has been such for nearly five years. Lincoln County was created and cut from Benton County in 1893, he thinks it was. He is familiar with the unsold lands of the Oregon & California Railroad Company situated in Lincoln County, and the company owns in that county, according to his recollection, 15,906 acres. His duties as county assessor caused him to investigates these lands as far as he could. He has followed the usual travel through trails and roads running in through that country, and taking observations in a general way of the lands; and he thinks he viewed, at least he intended to view, substantially all of the lands. He knows what is merchantable timber when he sees it. The character of the timber that generally grows on these lands is second growth fir, which predominates in the timber in that country. He has a little memorandum he took off of his books before he started to make the assessment, which will refresh his memory as to the character of these lands. To which testimony of the witness complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be deemed taken to all the testimony of this witness, relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof. Whereupon witness testified, that he thinks he can remember substantially. The portion he considers where the old growth predominates is 480 acres, in Township 14 South, Range 9 West, and there

would be about 6,000 acres, or a little more, of young fir timber, or what he calls second growth, and that land is chiefly valuable for timber. This second growth timber is considered merchantable. In a general way the balance of the land is called hill land; but in these hills are some bench lands, some small bottoms, in places through it. He would call that hill land which is steep, practically worthless outside of the timber, and he thinks there are perhaps six or seven thousand acres; portions of this six or seven thousand acres could be good for goat range perhaps, if cleared. It has salal, alder, vine maple and some fern mixed with the salal in places on it. There are some tracts of this six or seven thousand acres, in places, small tracts of it, that could perhaps be used for agricultural purposes; and he would say that scattered through this six or seven thousand acres, fifteen per cent of it could be used for agriculture or horticulture. These parcels are all scattered through the six thousand acres, and are small benches and small bottoms on creeks, scattered pretty generally through these lands. Of the balance of nine thousand and some odd acres, about three thousand acres are what they term better land than the hills he has been describing. It is better because it is nearer roads and settlements, and a little more level in its character—a little better land. But this is not all in one body. This is scattered through this remaining nine thousand acres and over. They term it a little better land and assess it a little different. It is not scattered all the way through, but it is not all in one place; it is nearer to settlement, nearer to roads and

is a little more level as a whole. It is covered about the same, except he forgot in the first place to say that there is some young fir scattered over in places, some small trees, all over this country. This 3,000 acres, to which he refers, would need to be cleared of brush and timber —he thinks, it would. He has had a little experience in clearing lands, not that kind of land, but in clearing lands, as he is a farmer himself, or used to be, before he got into the assessor's work. He does not know exactly, but his judgment would be that this land perhaps would cost to hire it cleared and put in cultivation from $25 to $50 an acre. This land in portions of it is rough; there are portions of what they term bench, which is practically level; there are portions of all this land which is rough hills; of this 3,000 acres, as near as he could judge, there would perhaps be 25 to 30 per cent of it that could be utilized for agricultural purposes, or for fruit and things like that. The balance of the nine thousand and odd acres, after taking out the 3,000 acres, is covered by second growth timber and old growth, and they value it principally for its timber, and it is chiefly valuable for its timber. He would say that of the total of 15,906 acres, 1,500 to 2,000 acres are agricultural and horticultural, thus scattered and in its present condition. These small tracts making up this 1,500 to 2,000 acres would range from five to fifty acres in a place. There is none of this land cleared so far as he knows. He never saw any of it cleared, and there is none of it, in a state of nature, that is fit for agricultural or horticultural purposes, until it is cleared; that is, he does

not think so; he never saw any. He means that there is about 1,500 to 2,000 acres in all that could be made useful for agriculture or horticulture. It would be about ten per cent of the whole 15,906 acres.

Q. Now, suppose that the company should have an applicant under this Act of Congress of April 10, 1869, to purchase 160 acres in legal subdivision all together—I mean in a string of forties, or in a rectangle or square, as the land might be selected, at the price of not to exceed $2.50 an acre, and in a quantity not exceeding 160 acres, and the applicant bought it for a home, for settlement purposes, upon which to live and make a home, I will ask you to state, from your knowledge of this land and the conditions in which it is at the present time, whether or not such person, if he were confined to his quarter-section thus selected, and not allowed to use the balance for grazing, was expected to make his living on that piece of land for himself and his family, and make a home of it—whether in your judgment a man could find a quarter-section that would be suitable for a home, for actual settlement, upon which he could make a living?

A. Yes, he could find some. There is some that he could make a home of.

Q. Out of this 1,500 or 2,000 acres?

A. Yes, sir.

Q. But with that exception, what would be the success of trying to settle this land?

Q. You may answer now. Supposing the settler

was confined to the quarter-section?

A. I don't think it would be a good business proposition for him to undertake it on this land.

Q. What is the fact, in your judgment as to whether or not anybody would undertake to make settlement and homes on this land, eliminating this 1,500 to 2,000 acres, and whether it is practicable?

A. They might some undertake it, but I doubt of its being practicable. I don't think so.

Whereupon, witness testified, that there was a fire through that country, commonly known as the Yaquina Bay fire, years ago; the old settlers say there were two fires, which one of them burned this part he does not know; one in 1858 and the other in 1868. They burned a great scope of country. There are some burned stumps standing there yet in places. This burned area is the same country which he has been describing as hill lands. It was originally timbered land, principally, he thinks. There is some indication in this burned district of reforesting; in places it is covered now with a young growth of fir. It would, he thinks, if reforested scientifically, if seed were scattered over it, in his judgment, ultimately go back to good fir timber; and if reforested it would be chiefly beneficial for timber; and it is in the timber belt of the Coast Range of mountains. Whereupon, on cross examination, witness testified, that he had been assessor of Lincoln County nearly five years; this is the fifth roll he has made, which he is now making. They did not cruise the timber in Lincoln

County for the purpose of assessment; they have no cruisers. He gets the best information he can through deputies and through his own observation. He tries to get deputies who knew conditions and knew the country in each locality; and in this particular case, of these railroad lands, the first year he was assessor, he sent a deputy through this country to survey these lands and mark out on the plat what was timber and what was not. He assessed them that year from that knowledge as a deputy assessor, and witness has the plat in the office now which that deputy marked. The information he has other than this is general, and his own observation in going through the country and talking with the people in through there. He never personally made an examination by running the lines, or segragating these railroad lands, and never attempted to cruise the lands, or make an examination on the ground, except in passing along the traveled trails and roads; and to some extent he has based his opinion as to the character of these lands upon the reports made to him by men that have worked under him. He does his work on their reports. Lincoln County is a hill county, and these lands, he thinks, lie on the western slope of the Coast Range. Practically all of those lands on the west slope of the Coast Range have red soil and grow vegetation profusely, due to some extent to the moisture on that side of the range. Lincoln County is not very much of a dairying county yet, they have started in on it. The dairying business is more extensive, perhaps, north of there in Tillamook County, but they are starting in the

dairying business in Lincoln County. The lands they farm in Tillamook County, with few exceptions, are bottom or bench lands; the hill land of Tillamook County is not farm land, so far as he knows; he never heard of it. A greater portion of these lands in Lincoln County is now set with some kind of small timber. There are some lands in Lincoln County not covered with timber, tide lands and some lands along the coast, that have simply salal, no timber. There is very little logged off land in Lincoln County; there are some old burns that are being cleared, very little, if any, logged off lands, because they have but very little in Lincoln County, and no logging is done there. The only railroad they have is the road running from Corvallis over to Toledo in that county. He classified these lands by getting information for the office of what portions were tillable, and what portions were bottom and could be tillable, what portions were rough, and what portions were timber lands; but on the roll they say so many acres of land worth so much money, and do not classify them on the roll. They added these different character of lands all together in the office, and set it out on the roll as so many acres of land worth so many dollars, without classification. Fruit does pretty well in that country. It is a sparsely settled country. They have family orchards. There is no merchantable and no marketable fruit raised for market; very little of any kind of fruit in Lincoln County; fruits and berries do well there. He recognizes the photographs shown in Government's Exhibit 121, entitled "Toledo, Oregon." These two photo-

graphs are pictures taken of a sawmill in Toledo, and showing a hilly background, with some timber on it. It is a photograph of Toledo, with the hills in the background, and is situated in Lincoln County. Whereupon complainant offered said documents and photographs in evidence, as Government's Exhibit 121. To which defendants objected on the ground that the documents or photographs do not relate to the lands in suit, or similar lands, and is therefore irrelevant, incompetent and immaterial, and so far as the article is concerned, is hearsay. Whereupon said exhibit was received in evidence, and is hereinafter set out and described, and made a part of this Statement of the Evidence, and identified herein as Government's Exhibit 121. Whereupon, on redirect examination, witness testified, that he did not confine his knowledge of these lands altogether to these reports made to him by his representatives in the field; he has seen the country, and thinks the whole of it; and has been through the country several different ways, in the settled parts, where there are roads and trails through which he could get through, he should think a territory covered by one-half of these lands, perhaps, but maybe not on each piece of land, but through the country and he is satisfied that he knows the character of these lands. Referring to Government's Exhibit 121, to the picture, "Glimpse of Woodland Scenery in Vicinity of Toledo," his best judgment is that that is the Siletz River, north of Toledo, and most of it is a timbered country. There is lots of fine timber in the Siletz country. He does not recognize, or locate, the picture "Bottom lands near To-

ledo are especially productive." The bottom lands around or near Toledo, or in the vicinity of Toledo, are principally tide lands. The statement in this exhibit "Vast timber resources. Directly tributary to Toledo there are, at a conservative estimate, between 15,000,000,000 and 20,000,000,000 feet of merchantable timber," is overdrawn, how much, would all depend upon what one would consider tributary to Toledo. Practically all of the timber that is near Toledo is on the Siletz; and Toledo is nine miles from the Siletz River; and if they counted the Siletz country as tributary, that would be a good estimate. Very little of that timber could be delivered at Toledo, except by rail. They would have to build logging roads; and the same thing is true of the mills on Yaquina Bay. There is a short road, perhaps a mile and a half long, running up the slough. They haul these logs to tidewater and float them to the mills. This road does not tap the main body of timber, however; it does not reach them. Toledo claims seven or eight hundred population, and is the county seat of Lincoln County; Toledo is on the Yaquina River, which empties into Yaquina Bay at Newport, which is at the mouth of Yaquina River and Yaquina Bay. The Corvallis & Eastern Railroad runs from Corvallis, through Toledo, to Yaquina Bay. There is about half of Lincoln County that is timbered with merchantable timber. He has seen these folders, marked Government's Exhibit 121, but he has never examined them very closely; he does not know that he has ever seen one just like this one, but he has seen some of them. Whereupon, on

recross examination, witness testified, that he thinks the timber in Lincoln County is due north from the western border of these lands on the Siletz River, in that vicinity there; a little west, principally north. Stock raising would be, he thinks, the main industry of the people in Lincoln County. They raise sheep, goats and cattle. They raise Angora goats to quite a large extent. He thinks that Government's Exhibit 121, purports to be issued "under the co-operative Community Plan of the Southern Pacific Lines in Oregon. Wm. McMurray, General Passenger Agent." He remembers seeing one like this one, and examined it a little, and thinks this is the same.

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No. 2400

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME VII

PAGES 3245-3788

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APR 4 - 1914

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

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No._____

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EVIDENCE IN REBUTTAL FOR COMPLAINANT

Whereupon MICHAEL KEBELBECK, called as a witness on behalf of complainant being duly sworn testified, that he was born in Bavaria, Germany, and is fifty-four years old, coming to the United States when he was twenty-four, and is living now at Cottage Grove, Lane County, Oregon, and has lived in Lane County twenty-four years. When he first came to Lane County he bought eighty acres of land west of Cottage Grove; was there awhile and then worked for the Booth-Kelly Lumber Company about fourteen or fifteen years logging, and then got a place on the Coast Fork south of Cottage Grove about seven miles. During the time that he has lived in Lane County he has become familiar with the character of the land in the vicinity where he lives. He worked for the Booth-Kelly Lumber Company east of Saginaw at a place called Bear Mountain in sections 2, 3, 5, 9, 15, 16, 17 and 21. They have a mill in section 16 now. He worked all around there in that country and up and down the flume, from there down to Saginaw, they sent him east and west and north and he looked at the timber and which way the road comes out to log and one thing and another there. He was also back a little at Fall Creek he logged there several years. He worked at Wendling five or six years and then at Deerhorn up the McKenzie River for three years on sections 21, 27, 22 and 28 in that country there. He worked in Wend-

ling six or seven years. When he was in Bavaria he farmed. He had worked there on a farm all the time and made a living there. When he came to Oregon he bought land here and then switched over to logging, but now he is going back to farming again. He is familiar with the general character of the soil in Lane County, in these different communities and knows part of township 20, range 4 west and has land in that and then in township 19 in Saginaw and then in Wendling, he believes in 17. He was through there. In township 20, range 4 west is where he located his eighty acres. He knows out there sections 26, 28, 34 and 35, some settlers back in there. He had a little ranch first in section 25 and knows all that through there. He prefers the McKenzie country. Wendling is good soil too and it is pretty good soil really all through there. These different sections mentioned by him are in township 20 south, range 4 west. He is not acquainted with any of the lands purchased by the Booth-Kelly Lumber Company from the Railroad Company in that vicinity, that is, in township 20 south, range 4 west, but is acquainted with the railroad lands in Lane County.

Whereupon witness testified:

Q. I will ask you whether, from your experience in farming, that land is valuable, or will be valuable for agricultural uses after the timber is removed?

A. Well, it will be. It will be, because I tried myself—I was in Fall Creek. I grubbed out a rod square in one place, I had a rod square, and in one place

I had 20 feet square. I dug out a place, and put a fence around it. My wife was along, and my two boys were along—wanted to get out and go wherever I went to. So we went and grubbed a piece of land, grubbed the roots out—salal brush and everything—grubbed it out in the fall, and put it in in the spring; and I had the best garden that ever a man could see anywhere. The boys, they come down from McKenzie or from Wendling, come up and said, "Well, Mike," they said, "you beat them all." And if I hadn't done it myself, I would never believe it. I had lettuce that grew up, just swift up, and radishes, and anything—turnips—anything I put in. It didn't need the water like it does down in the valley. That keeps moist up there, that soil, better than down in the valley. And then I had apples in winter, and I put them in the ground, the seed, and one year they grew that high (illustrating). The second year they grew six foot high, and I had 71 apple trees on one little space, and I know they grew. The fruit grows better up there, about 1000 feet up from the valley, than it does in the valley. It is better fruit. Its leaves are wide open green all summer, and down in the valley they curl up. And it don't need so much irrigation up at the top. Some way the soil don't dry out as quick as it does down below.

Q. Do you know whether the Booth-Kelly Lumber Company itself has used any of its land for the purpose of growing an orchard, or hay?

A. Not of orchard. But Booth-Kelly Company told me at first in Saginaw, they sent me up some seed,

orchard grass and timothy, and I had to sow it, burn and sow it. Had to burn first, burn the slashing, and then sow it; and that grew fine. As well as in Wendling they told me I should sow some, and I did. And at McKenzie there is the best crop of hay anywheres, in section 21. It is three and four feet high. You couldn't see hardly at all walking in it. That is the best I ever saw anywhere. It is on the McKenzie. Well, at Wendling, too. The grass grows good in the burn, grows fine. Of course, after it kind of runs out, you want to grub it and work it good, and it will grow again.

Q. Well, now, how does that land there compare with similar soil that you have seen cultivated in Bavaria, as to quality of the soil, and rainfall, the way the land lays—whether level or rolling, or hilly, and all other conditions?

A. This soil seems to me stronger than where I had to work and grub in the Old Country. I can raise a heavier crop, and better potatoes. I don't know why, whether it is the new land, while that is old land, farmed a thousand years or something, and here, why, it is new. But here I can raise better stuff on the same thing than I can there. I don't know why it is—whether it is because that is old, or whether it is because this is new and everything here. But I can raise better stuff here than I can there on the same condition, the same ground.

Q. Is it just as hilly over there in Bavaria as this land is here?

A. Well, some is hillier. Some is hillier, but we

had to climb up and work it, though.

Q. Well, do they work land of that same kind over in the Old Country?

A. Yes, sir, we do. Yes, they do.

Q. Now, Mr. Kebelbeck, these different quarter sections of land that you know of that were purchased by Booth-Kelley Lumber Company from the railroad company, and the railroad lands that are still left and held by them in that general vicinity there where you are acquainted, I will ask you whether, in your judgment, a man could make a home on those quarter sections, and make a living for himself and his family?

A. Well, I know they can. I know they can, except I would take out some mountain pinnacles. There is a rock point up in there, and there is a mountain over there they call Oshkosh in Wendling; or there is, say, Bear Creek mountain—it comes right up steep. But outside of that, I will take any quarter section and make a good living on it.

Q. Well, now, how much land is covered by these mountain tops that you spoke of?

A. Well, those mountain tops I was speaking of, the pinnacle of it, I don't think it is more than about 160 acres.

Q. In each case?

A. In each case of that mountain what I would take out. I would not like to really tackle to farm it there.

Whereupon witness testified that he tried to buy some land from the Oregon and California Railroad Company near Cottage Grove. He left the place twelve years ago which he sold. About fourteen years ago or such a matter there was a forty back of his eighty, water he used for the house came out there, and he thought he had better buy it before anybody else bought it, so he would get the water for his house use. He applied to the Railroad Company to buy that forty and it replied that it was not for sale but that if it was, they would let him know. He wanted to get more land there, because there was a nice place on it like his, below on the flat. He wanted to extend his field further and it was good upland outside of the spring, good grazing land and some patches on it that could be grubbed out and worked and farmed. This was about fourteen years ago. Afterwards he moved to town and wanted to buy a piece of railroad land in section 35, a forty looking towards Cottage Grove but the Company would not sell it. It was not on the market they said. He is familiar with the land between Cottage Grove and his farm in section 32, township 21 south, range 3 west and with the land from there on to the divide on the west. He went over there once with his wife on a trail; that is pretty good land. He went from his place over to Brumbaugh Creek, Louis Geruh had a homestead out there. He believes that in every quarter section of the land except the mountain tops in that vicinity with which he is acquainted, a person could find about forty per cent, he could plow and there are lots of other things

that could grow on the rest, without plowing. There is grazing land and it could be used for all kinds of things without plowing. He thinks it is safe to say there is about forty per cent that could be plowed, in his judgment. They plow steeper land than that in the Old Country and have a hill-side plow which plows all one way. He was at the mills of the Southern Pacific Company at Marcola but was not very far back. The Wendling mill lies further up. He went through from there to McKenzie and saw men working but he did not go out in the woods much. The land around Marcola is good, is all right. It is not very hilly what he could see from the railroad and he went back to two mills there. It was all right as far as he could see. Where they were logging it was not very steep. He is acquainted up at Saginaw a whole lot, quite a few sections. He started in on section 9, then on sections 17, 5, 3, 8, 11, 10, 16, 21 and 15. He is acquainted with those sections up there in Saginaw all around the mill and cruised the timber. He is not exactly a timber cruiser but Booth-Kelley Lumber Company sent him and the superintendent of the Company out to look at a mill site on section 16 and the superintendent required them to cruise through the timber all through that country. In addition to these sections in these different townships or around these different mills referred to, he is acquainted in a general way with that country in that general vicinity and the other land in that general vicinity is just about the same general character through there as the land that he examined particularly. He

is a naturalized citizen and not interested in any of these lands in any way. His place is in section 32, township 21 south, range 3 west on the Coast Fork, which was an old donation land claim and his deed goes back to 1879 he believes. He never worked for the railroad company to speak of. When he first came to Cottage Grove he worked a few days on the section and then Japs were employed and he had to quit. This work for the railroad was when he first went in to that country twenty-three or twenty-four years ago and it was only for a few days, and with that exception he has never worked for the Oregon & California Railroad Company, nor for the Government.

Whereupon on cross-examination witness testified that he had never taken a homestead and does not think there is much left in Lane County to homestead. The bulk of the land that he has been over and examined is mostly timber land with fir and hemlock and is saw timber. The fir, hemlock and cedar is the principal stand, but the most is fir. It is good timber to buy and a good place to make an investment in timber land, and is chiefly valuable for timber. It is good timber and would be best. He is pretty well acquainted around Saginaw, which is on the railroad. The land that he knows around Saginaw is about a mile and a half or two miles east and northeast from Saginaw and is timber land. His eighty that he owned near Cottage Grove is in Section 25, township 20 south, range 4 west, near a place called West Veatch about, three miles straight west from Cottage Grove on railroad land. It was timber and was a little

ash timber and he has owned it about twelve years. It was railroad land, because he had to send $93.00 to the Railroad Company when he bought, as the land was under contract at that time and he made the last payment. The Railroad Company had this contract with Hamilton Veatch. The other railroad land that he wanted to buy, was a forty just west of that. He had the north half of the northeast quarter of section 25 and he wanted to buy a forty that adjoined that on the south but did not offer the Company any price because he did not know what the price was. This was about fourteen years ago. This forty was principally timber land. A man by the name of F. F. Miller bought it from the Railroad Company and there is a house on it now. He bought it about six or eight years ago. Wendling is on a branch of the Mohawk about twenty-two miles from Eugene and the country is a little rolling. It is good timber, pretty good timber there; around Wendling there are farms here and there, where the timber comes down, but not above Wendling any more, not since they logged. There are no farms on this timber land in the timber, it is just wild timber. The land is chiefly valuable for the timber, but if it is cleared off it is good for farming too. If he had to hire the land cleared and blow out all the stumps it would cost him $75.00 an acre, maybe $50, maybe $75. The heaviest timber where the stumps are eight or ten feet through at the butt might cost him a little more. He believes he could clear that land if they would give him a contract for $75.00 and the heaviest for $100.00 an acre. The big trees on this land average from a foot and

a half up to five feet. In the best timber there are some fifteen, twenty and thirty trees per acre, but he does not think there are one hundred trees on any acre. Not many of these trees are six feet through, but there are some. He has never grubbed out any stumps that large or blown them out with powder, he has grubbed out oak grubs a little but not any big trees, and there is a whole lot of roots under the ground in these lands and one could not plow it, without taking these roots out. They logged off some lands in section 21 on the McKenzie, right across from Deerhorn Postoffice, and burned the logs and seeded the land down; this hay that he spoke of was on this logged off land; there must have been 120 acres, possibly 160 of timothy and orchard grass which was used for pasturage. They did not pretend to mow the hay, the hay was growing in the stumps and there were fifteen or twenty stumps to the acre. This land was logged off by the Booth-Kelly Lumber Company, who bought the timber from another party and had a certain time in which to log it off in section 21, and that in sections 22 and 27 belonged to the Booth-Kelly Lumber Company. He has never tried to make a living on 160 acres of this timber land, but tried to make a living on his eighty, which is on a bench. Cottage Grove is one of the oldest settled portions of the Willamette Valley and the land around Cottage Grove, he understands, was taken up as donation land claims and there is a donation land claim close to the railroad section that he is in. He has been told that that donation was taken under the law of 1850—they all took it up around there at that time. He has a

place on the Coast Fork close to the river of 108 acres which he bought. He does not know whether it is railroad land, but believes that it is part of a donation claim. It is on the Coast Fork of the Willamette River and is comparatively level land, about half of it is timber, what is on it, is saw timber, but there is not enough of it to sell the logs. There is just enough on it for family use for generations to come. There is about 45 acres under cultivation which he rents. It is used for raising wheat and oats and potatoes. He did not exactly cruise for Booth-Kelly Lumber Company, but that company had him run out their lines where he got the timber out and one thing and another. He first owned his eighty acres, and when he got pretty good wages from the Booth-Kelly Lumber Company he sold it and moved his family to the timber with him. He sold that eighty about twelve years ago for $750.00 and since that time he and his family had been living out in the timber at the mills of the Booth-Kelly Lumber Company, for whom he had been foreman since he left his farm, until he quit.

Whereupon on redirect examination witness testified that after the timber is taken off of these lands he could make it good plow land, a good home. The ordinary settler does not hire people to take out the stumps in clearing land, they go at it in a different way, space by space, clearing an acre a year and another acre or two or three and keep on that way—that is the way. They cannot spend $200.00 or $300.00 or $1,000 a year. It is pretty hard to start, but it is better than any other thing and a man can go out and make a living and by

and by a nice living. He is not working now for the Booth-Kelly Lumber Company; he left its employ July 4th last. He is living in Cottage Grove now, where he has his home, and he believes he is going back on the place some of these days and farm—that is on his place over on the Coast Fork. If a person grubs land and grubs it down ten inches below the top that is sufficient to farm. The Booth-Kelly Lumber Company have been asked a few times to sell some of their logged off land, but as far as he understands, it is not for sale. Some one wanted to buy 80 acres and they would not sell. People cannot get hold of these lands, and cannot buy them. It is not for sale. He heard that Booth-Kelly Lumber Company did not want to be bothered with a small tract of land to sell, that is, they wanted to keep it one way or the other. It would injure them if they logged off 80 acres in front or 160 acres and some one got farther back, it would injure them to log through. They do not want to sell now or until further on. If they would sell now, supposing they would make a cattle ranch out of it as they thought at first, there would be cattle in there at Saginaw and if they would do that it would spoil their ranch. If they want cattle range, they want a great big portion of land in one piece—that has had something to do with it. He does not think they have to sell and he does not really know whether they do not want to sell isolated tracts because they would have to haul their logs across it.

Whereupon witness further testified.

Q. About how many quarter sections of this railroad

land and Booth-Kelly land, of this same general kind that you have spoken of, do you know of, that in your judgment would support a family if properly farmed? About how many quarter sections do you think you know of down in that country, of the railroad land and the Booth-Kelly land, that would support a family if properly farmed?

A. Well, really, as far as I went over it, I never found anything yet that four families couldn't make a living on a section of land. I never found it yet, outside of those pinnacles there on the top of the high mountain. I went over a whole lot of sections. I went in Saginaw and in Wendling, and in Fall Creek, and I went over a good many sections of land, and I never found it yet. I was out last week from Cottage Grove, on section 1, and we found a space up there of several acres, right on the top, with a flat ash swamp on it, fine black ground. And there is what I found on section 27. I looked over some timber, wanted to buy it from Booth-Kelly, on section 27, on the left hand side. I found there was a nice swamp up there, too—leaf grass about that high (illustrating), black ground, ash, and maple, and things through it. You find most in every quarter section, you find some springs and some good land. That part, the land is all right—a person can make a living on that.

Whereupon O. J. LAWRENCE, called as a witness on behalf of complainant, being duly sworn, testified that he lives at Zion, Lane County, Oregon, and has lived there six years; prior to that, he lived for fifteen

years at Aberdeen, on Grays Harbor, Washington, and prior to that, in North Dakota, near Bismarck. He was brought up on a farm. While at Grays Harbor he was in a logging community, but he was engaged in the mercantile business. There was very little farming—just little truck patches here and there at Aberdeen. He observed the uses that could be made of logged off timber land while at Grays Harbor—saw quite a bit of it, and also has considered the subject since he has been a resident of Lane County. He is familitr with a part of the lands in Lane County. In the particular section where he lives, he was deputy assessor last year, and had to do with assessing the timber lands in certain townships, and went over them, while discharging his duties as deputy assessor. He became quite familiar with four townships while so engaged. He is familiar, in a general way, with the lands surrounding these four townships, and has hunted more or less there. The four townships to which he refers are townships 19 and 20 south, 1 west, and township 18 south, 1 east and 1 west. During this time, and in the manner mentioned, he became familiar with and assessed railroad lands in these townships. In township 20 south, 1 west, he presumes that nearly one-half are railroad lands, and very little railroad land in township 19 south, 1 west. He does not know anything about railroad lands in 18 south, 1 east. He has seen some of these lands that have been sold by the railroad company in that general vicinity. He has examined some of the lands owned by Booth-Kelly Lumber Company in these townships, that is, in 19 south, 1 west; that is, he knows

they sold a section there at one time, which is a part of the old wagon road grant on the middle fork of the Willamette. His observation has extended into the so-called foothills of the Cascades there. He is familiar with the lands which have standing timber upon them, and also the logged off lands, and has made an observation as to the value of these lands for agricultural or horticultural use after being logged off.

Q. I will ask you to state whether, in your judgment, lands in the vicinity that you have described, including not only the railroad lands but the intervening even numbered sections and lands that have been sold, can be used for agricultural or horticultural purposes after the timber has been logged off?

A. They can.

Q. I will ask you to state what is your judgment as to whether a quarter section of that land is capable of maintaining a family by subjecting it to agricultural and horticultural use?

A. I think it would be very difficult to find, in that territory that I have gone over, a single quarter section that would not support a family. I know of one such quarter section, and that is the only one that I ever observed there. That is just broken rock. It has quite a bit of timber on it, but there isn't any farming land on it.

Q. What township is that in, if you remember?

A. That is in township 20 South, 1 West. It is a part of section 2.

Q. Your full name is Orange A. Lawrence, is it not?

A. Yes, sir.

Whereupon witness testified that he applied to the railroad company to purchase the northeast quarter of Section 17, township 20 south, range 1 west, of these unsold railroad lands, and he examined the land before he applied to purchase it. It is a very fine piece of land.

Q. Is that land of such a character that it could be settled upon, and improved, and cultivated so as to support a family?

A. Yes, sir, it is very fine, a very fine piece of land. It has one table-land on it of about 40 acres, that is covered with timber, of course, very good timber, but it is fine land. It would make just the finest kind of a place after the timber was removed; and it has nice running water on it, and the soil will grow anything there that a person would want to raise there—splendid grass and all kinds of berries, and plums and apples do finely on all of that land.

Q. State whether or not you applied to purchase that land intending to settle upon it and make a home of it.

A. Yes, sir, that was my intention.

Q. From your knowledge of the character of the land and its value for agricultural and horticultural use, would you be willing to take it without the timber?

A. Well, I would if I were a younger man; but,

of, course, at my age I think I might trade it to my young brother, and let him work at it.

Q. But would it be valuable for a home with the timber removed?

A. I think it would.

Whereupon witness testified that he had made experiments to test the value of that land for the purpose of growing fruit, berries, and other farm products, and had some very fine fruit that he raised this year. He has never raised very many berries. They raise currants, which do very nicely. His neighbors raise all berries, and they cannot be exceeded as far as he has seen anywhere. When he first came onto the place he grubbed out six acres and set out apple and cherry trees, and a few other varieties, but of those he has seven hundred trees, apples and cherries, mostly apples, and they have all done very nicely. They commenced to bear this last year, and the quality of the fruit, he has never seen any better anywhere. They traded for a place when they went out there, and it was on that place, because he had a few acres opened up on it; and he traded some merchandise stock for this place in section 4, township 20 south, range 1 west. There are many other persons in that same township who have applied to purchase lands from the railroad company. He is one of the interveners and cross-complainants in this suit, represented by Mr. Lafferty, his attorney. The land he has applied to purchase is described in the bill of complaint as the northeast quarter of section 17, township 20 south, range 1 west. He has

become acquainted, since living in that general vicinity, with other lands in a general way, outside of these four townships, and is quite familiar with the farming lands. He is twenty-five miles from Eugene, and he always drives over to the county seat, and he always compares in his mind the two classes—timber lands and farming lands, and their relative values. They raise up there—on lands that have been farmed twenty years, on high hill land, as high as five tons of hay to the acre, and he has never seen anything like that down in the valley. He refers to township 20. His neighbor raised hay that went five tons to the acre, vetch and oats. The quarter section he applied to purchase is in the same township and the same kind of land. He has given thought and study and has had experience upon the subject of removing stumps —clearing land for cultivation after it is logged off. He did that the first season he was there—employed a man and cleared six acres. If it were gone at, at the right time of the year, and in the right way, with proper appliances, the land could be cleared for $40 to $50 an acre, by the char-pitting method. It might be sometimes advisable to use a little dynamite to give the fire a chance to get under the stump, to have a stick of dynamite to make a hole with, and the fire will do all the rest of the work. A stump fired in that way improves the land very much. He felled a tree in his field there and burned the log, and at least twice as much hay grew where that log was burned—a great deal higher hay grew there than on the other land around it, and places where the stumps are burned out could be used just the same. The finest kind

of grass grows there, and a tree can be set out there and it will do very nicely. If one does not burn it, the tree will very likely die, that is, if you do not use any fire there the ground seems to lack heat or something that the fire supplies, and anything grows right there.

Q. Even after these lands were logged off, and somebody else got the value of the timber, would they or would they not still be valuable for purposes of settlement, making a home, cultivation, and supporting a family?

A. I regard all of that land as having a great future. I have studied along that line quite a good deal, and I think it has a very great future. I think it will be very much more valuable for agricultural purposes, considering all the advantages that it has—plenty of good water every place pretty nearly; and the soil is fertile, and there is quite enough of it that can be plowed for to maintain a family, and the rest of it is all good grazing land, and I think it has a great future and is very valuable.

Whereupon witness testified that it would be necessary to remove the timber from this heavily timbered land before it could be used for agricultural or horticulural purposes. The trees will do very little good in timber, and it must be removed, and they must have sunshine before any real growth can be had—referring to grain, berries and fruit. Grass will grow in the timber, but will grow a good deal better where the timber is removed. Stumps don't make any difference—it grows just as

well.

Whereupon on cross examination witness testified that he applied, through Mr. Lafferty, to purchase the northeast quarter of section 17, township 20 south, range 1 west. They went to the railroad office and told them that they desired to buy that particular tract of land, as he had settled on it, and made, as they regarded it, the necessary improvements, and they tendered them the money, $400, with whatever taxes might be coming to them, and tendered the gold. He did not sign any written tender prepared by Mr. Lafferty, or some timber locator, but went in person with his money, and made the tender to a person who seemed to be the head bookkeeper of the office. This was approximately three or four years ago. He had built two cabins on this land, in the woods. In building these cabins he put up a frame and split out cedar shakes, and covered them in that way. He did not hew it out of the split timber, but peeled the young trees, which makes a very nice frame. He moved into the cabin and was there until he broke his leg, when he had to quit for awhile. He lived in the cabin something like six months. His family was there occasionally. He did not sleep there all the time, just there part of the time, off and on. He had the other place he was keeping up, in section 4, about a mile from this place for which he had made application. He traded for the land in section 4, consisting of 160 acres of timber land, and paid what they called $2500 in merchandise. It had a few acres cleared and an old house on it. The land had been taken a long time before, but he does not know how

it was entered, but supposes under the homestead act. He does not know whether it was a donation or not. His neighbor, David C. Matthews, told him that that part around there had been settled thirty-five years. The closest place to railroad from this place would be Goshen, seventeen miles away.

Q. How did you come to pick out this northeast quarter of section 17, Township 20 South, Range 1 West?

A. Well, I had looked around a good deal through the woods, and that is pretty level land?

Q. Well, didn't you pick it out because it had fine merchantable timber on it?

A. Well, of course, the merchantable timber would help to prepare it for a farm. I suppose that is a consideration.

Q. Now, Mr. Lawrence, don't you tell the court that the fact is you selected that quarter section because it was one of the best quarter sections of timber-land there were in that country?

A. No, sir.

Q. Isn't it, as a matter of fact, the best quarter section of timber in that neighborhood?

A. No, sir.

Q. It is about as good as any, isn't it?

A. No, sir.

Q. Well, why didn't you pick out one that was bet-

ter?

A. This one was right handy, and it is good farming land.

Q. But it was good timber, wasn't it?

A. Very good.

Q. Did you have a cruise on it?

A. No, sir, never had a cruise.

Q. Did you know what the county's cruise on it was?

A. No, sir.

Q. What is the county's cruise on that quarter section?

A. They never gave me time to cruise it, but they said to go over it and report in a general way about what it was worth.

Q. How many thousand feet, board measure, per acre is there on that quarter section?

A. Oh, I would have to approximate that.

Q. Well, approximate it?

A. Well, there is forty or fifty thousand.

Q. Per acre?

A. Yes, sir.

Q. Well, that would make it a good valuable quarter section of timber-land, wouldn't it?

A. Very good.

Q. What is it actually worth today as timber-land?

A. Well, I am offered claims that adjoin it for $3,000 a quarter.

Q. It was actually worth $3,000 for the timber that was on it when you applied to purchase it, wasn't it?

A. That would be my judgment, although we didn't have to pay so much as that.

Q. Didn't you really select that, Mr. Lawrence, because it was good timber-land?

A. Well, if there had been just that land there, and one that had no timber on it with equal soil, of course, I would have taken the farm land.

Q. Yes, I know, but it was covered with timber. You took it primarily for the timber, didn't you?

A. No, sir.

Q. You never expected to clear that land yourself, did you?

A. Well, I expected to hire it cleared.

Q. How old are you?

A. 54 years old.

Q. And did you expect to go there, and take your family, and clear an acre a year, and make a living?

A. Oh, no, I didn't have to do that.

Q. Now, isn't it actually the fact that you applied to purchase that because it was valuable for timber now —right now?

A. No. If it hadn't been valuable for farming land, I should not have been interested in it.

Q. Well, wouldn't you have paid $2.50 an acre for it for the timber that was on it, and never expect to live on it?

A. Oh, yes, I would at that time.

Q. Yes, and wouldn't you have been glad, and thought you had made about $2600, if you could have got it?

A. I certainly would have been glad, because I could have sold it for more than that.

Q. More than $2600?

A. More than $2.50 an acre.

Q. Well, you know that it was worth at that time $3,000 for the timber that was on it, don't you?

A. Well, I don't know about that. They were buying timber at $1600.

Q. I understand; but you don't want the court to understand that you wanted that for a home for yourself at once?

A. That is what I wanted it for. That is, I might not always want to live there, but I thought it was capable of making a great property.

Q. Yes.

A. And I had means so that I could hire the development done, and if I didn't live there all the time, I could have a place, a beautiful place, to go when I want-

ed to.

Q. You were advised by Mr. Lafferty that it was necessary for you to go out there and build your cabin, and live there awhile?

A. No, we did all that before we ever knew about Mr. Lafferty.

Q. Who advised you to do that?

A. Why, I advised my neighbors that we had better all do it.

Q. What was the idea?

A. Well, that is what the law required, as I understood it.

Q. You had to make some kind of a settlement?

A. Yes.

Q. How long were you going to keep that settlement up?

A. Well, we hadn't decided on that point.

Q. Just so you made a settlement of five or six months—then you expected to go away and leave it?

A. Oh, no. We hoped that we would receive such encouragement as would lead us to make all the improvements that the land ought to have.

Q. How long since you lived in your house that is on there—that cabin?

A. Oh, I haven't lived there steadily since I broke my leg. That is two years ago.

Q. Have you lived there at all since that time?

A. I have been there, and stayed there.

Q. How many nights have you stayed there?

A. I don't remember.

Q. As a matter of fact, Mr. Lawrence, you have not been there within two years and stayed over night on that place, have you?

A. Yes, sir, I have.

Q. One night?

A. I have been more than one night.

Q. Did you sleep in the cabin?

A. Yes.

Q. What have you got in the cabin that you slept on?

A. I have got a bed.

Q. A bedstead?

A. Certainly. Spring bedstead, mattress.

Q. Did your wife go there and stay with you?

A. No, sir.

Q. You would just go and stay by yourself?

A. Well, my girl was there awhile—we stayed.

Q. How long—two or three nights?

A. We didn't stay very long.

Q. How much did you have cleared there around that cabin?

A. I had very little.

Q. What did you plant on that land, if anything?

A. I planted some garden stuff.

Q. What was it?

A. Radishes and onions, and planted some trees.

Q. What became of the trees? Are they growing yet?

A. They are growing yet today.

Q. You didn't put out any fire though, to plant them in, did you?

A. Well, I burned a little around there.

Q. You had to burn this soil before it would support a tree, didn't you?

A. Well, they didn't do very good, because I didn't have fire enough—I hadn't burned enough to make it do good.

Q. And the tree didn't really do any good, did it?

A. The trees have not done very well, because they have not had sunshine enough.

Q. Now, your onions and lettuce, and stuff of that kind—just a little of that, wasn't there?

A. Yes, there wasn't very much.

Q. Just about like they would do on these homesteads, where they take them out in the mountains for the timber that is on them?

A. Something like that.

Q. Now, this soil that you speak of being such fine soil—it has to be burned over once so as to give life to it, doesn't it?

A. Well, I don't know about that. Of course, if you remove the timber it gets the sunshine, and the sunshine will produce vegetation.

Q. I understood you to say in your direct examination, that this land would not produce, would not support a tree—I mean an apple tree or a domestic tree, a fruit-growing tree—until after it was burned over?

A. Well, that, I referred particularly to where the tree stands. That ground under the tree is packed hard, and nothing else does well on that place, that particular place where the tree stands, until it had either sunshine or fire.

Whereupon witness testified that he had lived in the vicinity of these lands a little over six years, and these lands are considered pretty heavily timbered as compared with the other lands in Lane County. These lands have never been cruised by the county. He got the amount of timber on these quarter sections for the purposes of assessment when he went over them. He is a pretty good judge of timber—and has been buying and selling it for fifteen years. He made no segregation of the character of the land as to being agricultural, timber, or otherwise, but just estimated the value of the property. One would have to consider the land as well as the amount of timber, and he did put a value on that land for its agricultural purposes, but did not segregate the two values, but

had them in mind, that is, its agricultural possibilities and its timber. He never assessed logged off lands, and does not know that the timber was the principal element upon which the county was assessing the property.

Q. Now, you say that these logged off lands, you think, could be cleared for $50 an acre?

A. $50 an acre?

Q. Yes.

A. Yes, sir, I am hiring it cleared today for $40.

Q. What kind of land?

A. Heavy timbered land.

Q. Where is it?

A. Section 4.

Q. How many thousand feet of timber did that land carry before it was logged off?

A. Oh, it will carry 50,000 to the acre.

Q. And do you take the stumps out?

A. Everything has to be taken out ready for the plow, and fenced, at $40 an acre.

Q. How deep do you take the roots out?

A. Well, down so the plow won't hit them—about eight or ten inches.

Q. Well, then, when Mr. Booth testified that these lands would cost from $50 to $500 an acre to clear, your judgment differs from his?

A. I don't think he was well informed.

Q. You know Mr. Booth, don't you?

A. No, sir.

Q. R. A. Booth, of Booth-Kelly Lumber Company?

A. I have heard of him. I don't know him.

Q. These other people that you say have made applications to purchase in this same township, who are they?

A. Well, there is R. G. Balderee, and Lake, and there were two or three Smiths, and Mr. J. F. Holbrook.

Q. All in timbered land?

A. Yes, it is all more or less timbered.

Q. And they are all intervenors in this suit, all of you represented by Mr. Lafferty?

A. Yes, sir.

Q. And all made your applications to purchase, and offered $2.50 an acre, in the same way?

A. So far as I know, that was the way it was done.

Q. And all made little shacks on the place out there, and made a pretense of living in them for a while?

A. Oh, they lived—I know they lived very continuously on that land for a long time, some of them did.

Q. Are they still living there?

A. Oh, no, of course, they had to go out where they could school their children.

Q. Had to go out where they could make a living, hadn't they?

A. Oh, they could have made a living there—they have been.

Q. What can they do to make a living there? Just tell us.

A. They can raise cattle and sheep, and they can raise fruit, and it has been done there for thirty-five years, and they are still living there.

Q. Do you mean to tell this court a man could raise cattle and sheep on 160 acres of this timber-land, and confine it to that, and not pasture outside?

A. That is what I am doing now.

Q. And make a living.

A. That is what I am doing.

Q. On 160 acres of this land?

A. Yes, sir.

Q. Before the timber is removed?

A. Yes, sir. Plenty of pasture in the woods.

Q. How many head of cattle can you pasture on 160 acres of timber-land.

A. You can keep 20 to 30 head very nicely.

Q. Where would you get your hay to feed them in the winter-time?

A. You don't need very much.

Q. Where would you get what you would need?

A. You can always find little places that you could raise all the hay you would require for your milk cows, and the others do just as well if they are not fed.

Q. Do you mean to say to the court that a man could take 160 acres of this timber-land, fence it, and have twenty or thirty head of milk cows on that 160 acres, make a living in that way, and that they would be supported on this place?

A. I wouldn't say all milk cows, but I say twenty or thirty head of cattle. Let there be milk cows enough for the family, and the young cattle get along very nicely. The milk cows would need some roots, or something like that, to do much good.

Q. Yes. You haven't done anything of that kind with this 160 acres that you applied to purchase, have you?

A. Why, my cattle run on it a good deal.

Q. It is unfenced, isn't it?

A. No, sir, it is not fenced.

Q. That is what I mean. They rove over the whole country there, don't they?

A. Well, yes, they go where they please.

Q. They live on pea-vine, and whatever there is growing there in these mountains?

A. Lots of pea-vine and grass. There is just lots of all kinds of good food.

RE-DIRECT EXAMINATION.

Q. When you made your application to purchase this land from the railroad company, did you receive any encouragement of any kind from the railroad company?

A. We didn't—I didn't receive any particular encouragement, unless—I don't know—not any verbal encouragement. Of course, I observed their doings a good deal, and kind of figured on my chances and so on, but I don't think they gave me very much encouragement.

Q. Did you ever receive any notice of any kind from them after making your application to purchase?

A. No, sir.

Q. Did you know, or did you not know that the railroad company denied your right to purchase the land in that manner?

A. I don't know whether they objected to it or not. They didn't do it anyway.

Q. Well, now, if they had accepted your application and sold you the land, and conveyed it to you, could you have sold the timber and cleared the land, and subjected it to cultivation?

A. Why, most certainly.

Q. Well, then, when Mr. Fenton asked you what you could do with that land with the timber on, I will ask you what you could do with it if the land was conveyed to you and you had the right to remove the timber? Would that make any difference?

A. Indeed it would.

Q. How about the even numbered sections in that township 20 South, Range 1 West? Are there any settlements on them?

A. Yes, sir.

Q. How old are they?

A. Thirty years—twenty or thirty years.

Q. People living there?

A. Yes, sir.

Q. With their families?

A. Yes, sir.

Q. What are they doing?

A. They are raising hay and stock and fruit, and making very comfortable livings.

Q. Any reason that you know of why the same thing could not be done on the adjoining odd sections, held by the railroad company?

A. I see the land all just the same. Now, up in section 32 it is very high—section 32, Township 20 South, Range 1 West, is a very high point of land—and a German family by the name of Kloster went there something like thirty-five years ago. It was all heavy timber, and they settled up on that high land. There is a nice little bench up there—it is rolling—and they lived there until a year or two ago. The hill was so high that—the lady is a cripple, and she didn't like to walk up and down the hill; but you can see all of that

Lost Creek River basin from there—you can get just as nice a view as you can from some of those high peaks; and they have always raised the finest fruit up there, the quality is unsurpassed any place I have ever examined it; and the hay this year, they raised three or four tons to the acre. I was through it in June—it is a very rank growth. And it is clay soil, and just like all of the hill land around there.

Q. From your knowledge of that general country in there, Mr. Lawrence, I will ask you whether, in your judgment, the best way of developing that country is to sell it in large blocks to large timber companies, and use it simply for the taking off of trees, and then when the trees are removed to reforest it, and permanently withhold it from cultivation? I will ask you whether that is the best use that can be made of that land, having in mind the development and settlement of the country, from your knowledge of the general nature of the soil, and all of the conditions that enter into the question?

A. Why, from what I know of the country and its possibilities, from what I have seen done there, I know that, in my judgment, the best way would be to let people have it that will make homes of it and develop it; and some of the very most beautiful homes in Lane County will be up in that part of the country. I have been of that mind for quite a good many years, and have told my neighbors that.

Q. Now, did the refusal of the company to sell

this land and convey it to you in any way influence your action in making further improvements upon the land?

A. No, sir. I just kept up the improvements just the same. I hoped that they would change their mind or something; if they had it under consideration, that they would finally give us the land.

Q. Well, suppose that the railroad company had accepted your application and sold you the land, and conveyed it to you at the time you applied to purchase it, what would you have done with the land?

A. Well, I had it in my mind to make a beautiful place of it, a valuable place, as all of those places can be made valuable, and the timber there would help to do that; it would clear the land, probably, and make it quite easy to make a fine place.

Q. Well, why didn't you do that?

A. Why, I didn't understand that we would be allowed to cut very much of the timber. I understand that they had been stopped from doing that. In fact, one of the gentlemen that took one of these claims was ordered to get off the land by the railroad's attorney; and they sent a man up there to see what he had actually cut off; and we didn't want to go too far. We thought we showed good intention by doing what we did. And the trail—to get a good road into those claims, some of them, is a matter of quite a good deal of work; and I have got a road that you can go over with an automobile to my cabin. Perhaps I would have to remove a few

trees—they are always falling across the trail; we would have to get them out every month or two. With that exception, you could go right today to my cabin with an automobile.

Q. I will ask you whether, in your judgment, these lands would have been settled, cleared, improved, and reduced to cultivation, and made homes of, if the railroad company had sold them to settlers who applied to purchase them?

Mr. Fenton: Defendants object to that as something the witness could not possibly know, and as a mere surmise on his part.

A. Well, I have lived in seventeen states—I have lived in North Dakota, and I have seen what people had to do there to make a living, and the disadvantages they have to contend with; and when I think of that, and places where people do live and get along, I think that they certainly would be very well off if they could have a chance to make homes in there, and they would appreciate it so much that it would be taken up in a day, if it were known, that land for the purpose of making homes.

RE-CROSS EXAMINATION.

Q. Mr. Lawrence, I show you two photographs, "Defendants' Exhibit 270," purporting to show a photograph of your cabin on the northeast quarter of section 17, Township 20 South, Range 1 West, looking north, and a like photograph looking northeast, and will ask

you to state whether those are fairly good protographs of those cabins as they were on the 15th day of May, 1908, four years ago?

A. Is this representing the same cabin?

Q. Yes, same cabin, different view.

A. That is a fairly good view. That is my best cabin. I have got one that ain't quite so good as that.

Q. On the same place?

A. Yes, sir.

Q. What was the idea of building two cabins?

A. Well, the other one is built on the best land, but I had to go across a big gulch to get there, and I didn't take time to make a road to get across there.

Q. How far away from this cabin?

A. It is more than a quarter of a mile.

Q. Did you furnish both cabins in the way that you speak of having furnished?

A. Well, I furnished the other one, and then I removed the contents over to this one.

Q. There is where you intended to make your home, in this cabin?

A. Yes, sir, this is where I intended to make a home for awhile, anyway.

Q. Do you see any place there where an automobile could travel in front of that cabin, or around there, to get to that?

A. Well, here is a little kind of bad hill there; but right up on top of that hill there is a good road. Of course, it would be a little difficult right in here for a hundred yards.

Q. You notice that picture shows some fine timber just behind the cabin, doesn't it?

A. No, it is poor timber.

Q. I mean it is heavily timbered?

A. Oh, it is a lot of brush there.

Q. Did you locate that on this good agricultural land that you speak of? Is that the place?

A. No, I just built that cabin there for convenience, but the other cabin was located on the choice land.

Q. Well, how did you come to put this over there? There is where you wanted your garden, and your settlement, and your improvements?

A. Well, there is a good place right behind there, that could be easily cleared out there—that brush there.

Q. How far back?

A. There is five or six acres there that could be nicely cleared out, and make a nice little place for fruit.

Q. Where did you plant your tree and your onions?

A. Over where the other cabin was.

Q. You didn't plant any here, did you?

A. I planted a little garden there, but it didn't do

much.

Q. I wish you would take a pencil, and mark out with a cross there where you made your garden, on this photograph.

A. You can't see it here.

Q. As a matter of fact, you cannot see that human hand has ever stuck a spade or a hoe or anything else in the ground there, can you?

A. Well, you might not be able to see it, but I can see where I have dug ground.

Q. Just put a cross there where you have dug around for garden purposes.

A. I have dug around here in front of the house, down below here. You cannot see it, but it is down below this pitch here.

Q. Just mark out in front of the house where you have attempted to make any garden.

A. There is a little place right in there. You cannot see it on this picture.

Q. In front of the house.

A. Yes, there is a place burned off there.

Q. How big a space is it?

A. It is not large, but I just had a little garden there.

Q. Was it as much as a foot square?

A. Oh, it was half as big as this room.

Q. You say there was a space in front of that cabin half as big as this room, which is about 20x30 feet, where you planted any garden in front of that cabin?

A. Yes, sir.

Q. When did you plant it? What year?

A. Now, I wouldn't be certain about that. I think it was the first year I took it.

Q. What year was that?

A. Three or four years ago.

Q. Wasn't it in May, 1908, that you made your application to purchase?

A. I wouldn't be certain without referring to the papers.

Mr. Townsend: The complaint shows the suit was filed April 7, 1908.

Q. You filed your suit immediately after you made your application to purchase, didn't you?

A. I believe it was filed soon after.

Q. Yes, and you built your cabin just before you filed your suit?

A. Quite a little bit before.

Q. Well, six weeks before?

A. Something like that.

Q. And you had made your garden just before?

A. Oh, I don't know. I think the garden was made later than that. We had to do quite a bit of burn-

ing there to expect to receive any returns on our labors.

Q. Why did you have to burn?

A. Why, it is all brush. You try to open up that land, and you will have more brush covering the ground. You have got to get rid of that brush.

Q. What is the elevation of this place where this garden is?

A. Well, now, I would have to guess at that. I would say it was a thousand feet above the level of the sea.

Q. What is the nearest stream?

A. There is a little creek down there a couple of hundred yards, or a hundred yards from the cabin. Lost Creek is the nearest logging stream.

Q. How far away is that?

A. It is a little over a mile.

Q. Can you log from these premises to this creek?

A. Why, yes, the grade is very favorable for logging.

Q. And you took that into consideration when you took this land, did you?

A. Oh, that was all talked up to me when they sold me the land.

Q. Who sold you the land?

A. Mr. William Whitney.

Q. Who is William Whitney?

A. He is the gentleman that lived on the place.

Q. Well, I mean this quarter section—this railroad land?

A. Oh, I thought you meant the other.

Q. No, this railroad quarter section is favorable so it could be logged to Lost Creek?

A. That whole tract in there is quite favorable for logging.

Q. You considered that when you made the selection of this quarter section, didn't you?

A. No, I never thought of it.

Q. Didn't enter your mind at all?

A. No, I don't know that it did in particular.

Q. Well, did it in general?

A. Oh, if I thought about it at all, I would have thought that whole country there, that the whole basin is quite favorably located for logging.

Q. And you knew that when you made your application to purchase?

A. Well, if I had thought about it, of course I would have known it.

Q. Didn't you think about it?

A. Never gave it any particular consideration. I wasn't thinking about that.

Q. You were not thinking about the timber on this land at all?

A. Oh, that was a valuable asset to clear the land,

to make it a home. Of course, I would have to think about it.

Q. You thought about it a good deal, didn't you?

A. Well, I thought about it some.

Q. Just name the seventeen states that you have lived in, Mr. Lawrence.

A. I was born in New York state. My people moved to Wisconsin, and lived in North Dakota, lived in Ohio, and we lived in Indiana. I didn't live very long in some of those places. I peddled, and when I peddled I lived in the states when I was in them. I have not had a home in seventeen states, but I have been in that many in that way.

Q. I understood you to say, in answer to counsel's question, you had lived in seventeen states?

A. I meant by going through the states, I had.

Q. You had a home in eight or ten, hadn't you?

A. I have had a home in New York, Wisconsin, North Dakota, Minnesota, Montana, Washington and Oregon.

Q. And have you followed the mercantile business all that time?

A. No, sir, I used to teach school, used to peddle, kept books; did a little of everything.

Q. What have you been doing in Lane County the last six years?

A. Farming.

Q. On this piece of land in section 4?

A. Farming and buying and selling timber.

Q. I mean this section 4?

A. Oh, I improve all of that property as fast as I can.

Whereupon witness testified that he had been buying and selling timber in Lane County in a small way—didn't have much means. He bought a section of Booth-Kelly Lumber Company, part of it was timber, in section 25, township 11, range 1 west, which he has yet. It is not logged off, and part of it is pretty good timber, and it is in logging territory. He paid $4000.00 for it—does not know why the Booth-Kelly Lumber Company sold it. It is good saw timber. One-half of the section has been burned off. What timber there is, is good saw timber. He did not buy the land for the timber, but thought about its farming possibilities whenever he would go over it. It is very fine. The timbered half of it would have a stand of 50,000 feet to the acre. He offered it for $1.50 per thousand, but could not find any buyers. He had an offer of a dollar, which would make $50 an acre. He paid $4,000 for the section, and was offered $1.00 a thousand for the timber land, which would go 50,000 feet to the acre, and he wanted $1.50 per thousand. It could be logged off. He had another claim there and was offered $20,000 for the 800 acres, but he does not know what purpose the gentleman had in mind. That half section that he said was burned off is right up on the top of a high mountain, very precipitous,

and there is a man by the name of Tom Malloy who lived up there close to Zion, who had a beautiful place, but no road to get to it, but could raise all kinds of stuff there. The whole half section owned by witness there, which is burned over, is the same kind Malloy left his premises and went where it would not be so hard to get in and out. Malloy could make a good living, but if he raised anything there he could not get it out very well, and would not have any market for it. He could not haul it out very well; he could have fixed the grade all right, but his sister gave him a place on Fall Creek and it was an easier problem for him.

Whereupon on redirect examination, witness testified he bought this section from Booth-Kelly Lumber Company three or four years ago and they gave him a deed, which is recorded. This land is in section 25, township 19 south, range 1 west, and $10.00 is the consideration named in the deed. He did not buy this all for himself, and he does not own it all himself. He told an Eastern friend of his about the matter and that he thought it would be a good thing for them to buy it together, and his friend said to go ahead, if his judgment approved, and have it cruised. He had it cruised and it did not come quite up to his expectations. His judgment was that it was a good buy and he bought it. He has never seen the land, although he and his friend own it together today. He also bought 160 acres in section 24 adjoining this, making 800 acres altogether, for which 800 acres he was offered $20,000 two or three years ago, in a lump sum, and when he says that he was

offered $1.00 a thousand, he means it figured out about $1.00 a thousand. When he said he wanted $1.50 a thousand, he told the party he wanted $30,000 for the tract.

Q. Now, have you understood that the railroad company would prevent the persons who applied to purchase this land, and, for instance your own quarter section in the northeast quarter of section 17, Township 20 South, Range 1 West—would permit you to reduce it to cultivation and remove the timber for that purpose?

A. No, sir, I did not. I certainly thought they would not do it. I thought we would get into trouble, and we had some talk among ourselves about that.

Q. Well, then, does what you have done with reference to that land truthfully represent what you could and would do if the railroad company would convey the land to you, and permit you to subject it to the use to which it is susceptible?

A. Well, of course, there would be an element of risk there, that I would take in going on, and I didn't feel like doing it. I thought I had done enough to show my good intention. If I could get the land, why, I would do all that was required, and make what I thought I could make out of it. I think those places would be worth five times as much when the timber is off, and they are in such a state as they can be put in; and I have investigated this land business quite a bit, and figured on its possibilities, and what they do over in

the Walla Walla country with their lands there, and considered the altitude, and what it was capable of raising. I think that some of those townships there that we have been talking about, particularly Township 20 South, Range 1 West, has got possibilities that are equal to anything that Walla Walla has got for raising wheat for fall sowing. It does not do good for spring sowing; but fall sowing, it is excellent for rye, or wheat, or oats; and part of it is at such an elevation that the snows protect it in winter, and I believe that it will be just a wonderful place.

Whereupon on recross examination witness testified that he has seen the wheat, rye or barley growing on some of these timber lands there. His neighbors have raised them, just little patches here and there of this wheat, oats and rye. They have raised quite a bit of it, something like two or three acres on a place. That was on a piece of ground that was very heavily timbered at one time, but cleared off by some of these people. It grows better on the hills, on the rough lands. These spots are right on the hills. All the land of that German family he mentioned, is of that kind, is apple land and will raise hay and anything there. There is about twenty acres of hay on this German place, right on top of the hill, formerly very heavily timbered—the same as he has. They burned the timber up and did not sell it. The German family have lived there twenty-five years—raised a large family. He thinks they must have taken the land as a homestead in section 32. He does not know whether it was a homestead or donation. They only

tried to clear about forty acres of the 160 that they own. They cleared that forty acres more or less perfectly, and have been about twenty to twenty-five years in clearing the same. There is a man and his wife and six children, who have no trouble to get a living. They raised the stuff on the ground there and have cows and sheep. They did not dare to let their stock go too far over the country. They kept sheep and it was really dangerous to let them go very far on account of cougars, so they confined them to quite a close range to their place, but the cattle went further out, quite a ways. The whole country around there was open and they had access to that range for four or five miles in every direction, but they did not need it for their cattle, and their sheep were kept closer at home under surveillance, and he presumes they went over the land near by. They had twenty or thirty head of sheep, something like that, and sometimes ten or fifteen or twenty head of cattle, and two or three head of horses. He does not think they marketed any produce anywhere. They could have sold butter and milk, but he does not know whether they did or not. They did not sell any cream that he knows of, but they may have done so. Their nearest neighbor before he went in there, was about a mile, and the nearest school house more than a mile, and their nearest post office a mile to a mile and a half, called Zion Post Office, established before he came there, but since has been moved.

Whereupon on redirect examination, witness testified that this land of the German family spoken of, is

in the southeast quarter of section 32 township 20 south, range 1 west, but they have sold all but forty acres of it for timber land to Hyland Brothers.

Whereupon on recross examination witness testified that Hyland Brothers have a saw mill, but he does not know how extensively they manufacture. They own 800 acres of timber land on Lost Creek, and 160 on the Willamette, and have quite a lot over on Fall Creek—he don't know how much.

Whereupon JAMES WHITFORD, called as a witness on behalf of complainant, being duly sworn, testified that he is eighty-three years old; by occupation a timber cruiser; resides at Cottage Grove, and is employed by the Star Lumber Company. He has worked for the Booth-Kelly Lumber Company, and lived in Oregon ten years last spring. He has been in Lane County, and from Columbia County through to Josephine County. He has cruised mostly in Lane County, back and forth, and been engaged in the timber business pretty much all this time. He has never done any farming in this country.

Q. Have you been in farming communities, and are you acquainted with the character of soil of the land that is used for agricultural purposes?

A. Well, I have seen a good deal of land here in the mountains and in different places. It look very fine. I have seen very fine growth—stuff growing.

Referring to Defendants' Exhibit 259, witness testified that he has looked over the lands on the Coast Fork,

some of them pretty closely, and has been on the McKenzie and on Fall Creek. Parties would write to him from Minnesota to look at the lands and he would go and look at them; these lands he refers to were in Lane County. There is no difference between the even and odd sections. As a general thing one is equal to the other, as far as he can see. He has been over township 20 south, 1 and 2 west; 22—3; 23—2 and 3 west, and has a claim in 23—3 west, in section 2. He has been over these lands some. He does not think there is a section there that he has not been over, railroad and all. The land is about the same every place he has been in Oregon. Some places are more broken. Down in Coos it is more broken country, and in the Coast Range it is more broken. He has a general knowledge of these lands in the western part of Lane County, and also of the lands in the eastern part of Lane County. He has been on the McKenzie, but has a more specific knowledge of these lands that he has described by township and range, and was over these lands and the timber for the purpose of making a cruise of the lands. In making a cruise he has always noted the character of the soil, as to its agricultural uses, and made a statement whether it was good land or rocky, whatever it was. That was a part of his duties. Take the lands in these townships right through, as a general thing it would go fifty per cent farm land, if they were cleared and improved. Of course, there are hills, to be sure, but then they could all be worked. The remainder of the land when it approaches the river, that is the high knolls, where the

rocks make an appearance, is grazing; but grass grows on it. That is, the remainder of the fifty per cent would be grazing, in his opinion. He applied to purchase lands from the Railroad Company about five years ago, and wanted to get a quarter section in section 15, township 22, range 3 west, in Lane County, and they said it was not on the market. The percentage mentioned by him would run generally as to all of these lands about which he has testified. He cannot see much difference. One can see where they have settled on the even sections. It is all the same. They have settled on section four and on section two in that township, and there are settlers intermingled on the even sections. He does not think there is any vacant land in that township but what is taken.

Whereupon, on cross examination, witness testified that part of this railroad land that he applied for, was very good timber. There was a nice bottom and flat right there on Wilson Creek, which came down through it. The timber that could be logged on it was about three miles from the river, and they can log that distance, but there was about forty acres of it upon which there was no timber at all scarcely—it was vine maple, and kind of a flat. He cruised this quarter section and called it 4,000,000 feet. That would be a good merchantable quarter section as timber land. It was better than that. He did not make any offer for the land, but only made an application for it, and they reported that it was not on the market. He did not want to buy

it for the timber that was on it—he was going to settle on it. He tried to get a homestead on it one time, but could not get it as a homestead. The reason he did not pick out a quarter section that was all open instead of one that had timber on it, was that he could not get it in his time. All that was open, was taken. Most of the land with which he is acquainted is most all fair timber land. Some of it is better than others. He has never sold any timber, but has been a cruiser of timber lands; cruised for Charles Ladd of Portland, out in North Yamhill, and cruised there for the Carlton Lumber Company above Fairchild's old saw mill, and found some very fine timber up there. George Perkins had a saw mill there, but it is not running now—that mill is all sold out, but he owns a lot more timber in there. The timber land in that section is the best in Oregon. It is fine land after one gets the timber off, but it is now chiefly valuable for its timber. That is the reason he bought some; he bought a lot for Ladd & Tilton, because people could not do anything with it until they got the timber off. The only way to get anything out of it is to cut the timber off. He is now employed by the Star Lumber Company, doing anything that comes along—has been cruising a little. That company has not much timber land. It is in Lane County, in 21-1. He has not done any work for any of these large timber investors in Lane County. He is a man of family, but his family lives in Minnesota; they are all married off. The timber land of the Carlton Lumber Company on the head waters of the North Fork of the Yamhill River

is fine timber—fir and larch, a good deal of it larch, which is called Noble fir. He guesses that the timber lands of Western Oregon, west of the Cascade Mountains, particularly on the western slope of the Cascade Mountains and on the eastern slope of the Coast Range and the western slope of the Coast Range, including Coos, Yamhill, Tillamook, Lane and Douglas Counties, have the finest fir forests anywhere in the country, and that section is known throughout the United States as a timber country. He does not know as it is known altogether as that. They have some good valleys that there is no timber on. Men that were taking timber claims would have him go and look and see if there was any burn, see if they were all right. He does not know of any movement of Minnesota and Wisconsin people in these Oregon lands lately. They have taken timber claims, a good many of them in the timber.

Q. You speak about these settlements on the even sections—most of these settlements are in these timbered lands, aren't they?

A. Yes; but they were mostly settled years ago. One-half of them settled on homesteads.

Q. Most of those were settled by homesteads years ago?

A. Yes.

Q. The cabins have rotted down?

A. No, by gosh, some of them are living on them and making improvements.

Q. I know; but most of them have rotted down?

A. There is lots of them living on them, making a living.

Q. Did you ever see any abandoned claims in there that the timber people have bought up?

A. I have seen timber-claims abandoned, but not very many homesteads.

Q. You have seen some homesteads that the cabins were abandoned, haven't you?

A. Not but very few.

Q. In the timber districts?

A. I have seen a few over on North Yamhill abandoned.

Q. Did you see some in Western Lane County in the Coast Range?

A. No.

Q. See any in Coos?

A. I have been in Coos and been on the Siuslaw and Smith River. I have seen men that lived there for 12 or 14 years on timber claims.

Q. Most of these people that have settlements are on little creeks, are they not?

A. Yes, sir.

Q. And have a little open land, or little bottom land along the creeks?

A. Well, generally; but lots of it is up on the hills;

lots of them right up on the hills.

Whereupon witness testified that the Carlton Lumber Company had about 1600 acres which he estimated as containing 650,000,000 feet; that was a good buying estimate, but it was not a good fair selling estimate. If it was estimated again it would go over that. He cruised it for the buyer and it was proper to cruise it as low as he could conscientiously.

Whereupon N. H. MARTIN, called as a witness on behalf of complainant, being duly sworn testified, that he is forty-seven years old, resides at Cottage Grove and has lived in Oregon practically all his life. He was raised on a farm up to about seventeen years ago. The main part of his life was spent on a farm five miles west of Cottage Grove in Lane County and he is familiar with the farming conditions in Lane County and other parts of Oregon and on the western slope and west of the Cascade Mountains. Referring to "Defendants' Exhibit 259" his actual work in estimating timber has been in Marion, Linn, Lane, Douglas, Josephine and Curry Counties. There is where most of his work has been. He has traveled over other counties on the western slope in a general way but his timber estimating has been in those counties. He has cruised timber in township 8 south, range 1 east, the head waters of Little North Santiam. His work was also in township 8 south, range 4 east right next to the Reserve on the waters of the Little Fork or north tributaries of the Little North Fork of the Santiam. His work in Lane County has been on

the Mohawk, McKenzie River, Willamette and the West Coast Fork, tributaries of the Willamette, Row River, Brumbaugh River and the Coast Fork of the Willamette. His work was scattered over these townships in 19 south, to about 6 west, meaning all the townships in 19 south, 1 west, to range 6 west, inclusive. He has not done actual estimating in all the townships but has traveled over them. He has estimated in township 19, Ranges 1, 2, 3 and 4 West, but has never done any estimating in range 5 and 6 west, but has been over 5 and 6 enough to familiarize himself with the soil and the general conditions of land in those townships. He has had the same experience as in township 19, in townships 20, 21, 22 and as far south as township 26 south to about range 6 west. In 20 south he has been as far over as 10 west, right over on the coast, 8 and 10 west and he has been in practically all of the townships south of that up to 26 south, 5 and 6 west, except 26. He has only been in 2 and 3 west in 26 south and that is as far west as he had been in that township, that is in 2 and 3 west in 26 south, that is he has been in all of the townships from 20 south to 25 south inclusive, ranges 1 to 6 west inclusive, excepting that he expects in township 20 there are ranges 7 and 8 and possibly 6 that his travels have been very limited in and he would not undertake to say that he was familiar with 20 south, ranges 6, 7 and 8 west, but has a very good knowledge of ranges 9 and 10 west. His travels in township 21 were up to range 6 west but no farther. In 22 south the same and in 23, 24 and 25 about the same and also

in 26 ranges 1 and 2 west, and he has been in 20 south ranges 9 and 10 west, that is the only two townships west of 6 that he has had any experience in worth mentioning. He is acquainted in a general way with the lands in townships 20 to 26 south, ranges 7 and 8 west, but not by actual work. He has traveled through some of the country sufficiently to acquaint himself with the general characteristics of the country as to soil and timber growth and its formation. He has traveled along the Siuslaw River from the head to its mouth and on the divide between the Siuslaw and Smith River and some north of the Siuslaw on the divide and he has been in township 20 ranges 7 and 8 west and has traveled the full length practically of the two Umpqua Rivers, the south and the north fork and on the divide between the south and the north fork of the South Umpqua River. He believes the territory that he has gone over does not cover any township south of 26, as near as he can locate it from "Defendants' Exhibit 259." He has not covered any territory south of township 27 south excepting right along the railroad. He has of course traveled on the railroad and on the west fork of Cow Creek and he has been in township 31 south ranges 7 and 8 west and has done some cruising in 31 south 8 west and he has been through the township sufficiently to familiarize himself with the lands in that township and his travels farther south than that have not extended very far from the railroad. The lands just mentioned are those he cruised in Josephine County. The lands on the Santiam that he cruised were in Marion County on the Little

North Fork of the Santiam. The lands that he cruised in that territory would run 30 to 40 per cent agricultural land. The other land that he traveled through going and coming to his work was about the same, as near as he could tell.

Whereupon witness testified:

Q. State as to whether or not, Mr. Martin, a sufficient amount of tillable land existed on each 160-acre tract, described as I have mentioned, that would be sufficient to maintain a man and his family, if he should settle on this land.

A. There is very few quarter sections in that locality but what would support a family.

Q. Now, in the Douglas County lands, in 19 and 26 South, in the ranges that you have mentioned in your testimony that you were acquainted with, what, if any, material difference exists in those lands? That is, are they of the same general character?

A. The character of the land is better in that range than the other, for the simple reason that the climatic conditions are better. It is in a lower altitude. The ground is more of a red soil, but lower altitude; and, with the exception of a few steep hills and small rocky points, it is better on an average than the Little North Fork locality.

Mr. Fenton: Little North Fork of the Santiam, you mean?

A. Yes, sir.

Q. Do those same general soil conditions exist, and-climatic conditions exist, as to all the lands that you have mentioned in Douglas County, that you are acquainted with?

A. Practically the same in Lane and Douglas.

Q. What percentage of 160-acre tracts, described in 40-acre subdivisions contiguous, would be susceptible to settlement and the support of a family, of the lands that you have mentioned in Douglas County, in your opinion?

A. You mean 160 acres in 40s?

Q. 160-acre tracts in contiguous 40-acre subdivisions; not by a legal quarter section.

A. Simply adjoining, you mean?

Q. Simply adjoining 40-acre tracts?

A. Well, the sections, of course, vary in the townships. The average will run 25 per cent, or better. In many sections you will find forty acres that every foot of it can be farmed—reasonably smooth—and others you will find steep places, that would be too steep; but on the average, taking the whole range here, it will go better than 25 per cent. But the climatic conditions are better, as I said, than in the Little North Fork of the Santiam territory.

Q. You mean, there would be more than twenty-five per cent of agricultural land?

A. Yes.

Q. Now, what percentage of the 160-acre tracts described the way I have mentioned would support a family, would be suitable for settlement, of these lands in Douglas County, that you have covered by your testimony?

A. You mean, what per cent in the range from 1 to 6 West, of each quarter section?

Q. I mean, what percentage of 160-acre tracts, dividing the land covered in your testimony into 160-acre tracts, what percentage would be suitable for settlement purposes; that is, that a man could go on, and make a living on, as settlers commonly do on lands?

A. Well, there is very few of the 160-acre tracts mentioned in that territory but what could be settled, and would make a living for a family. There would be a few exceptions. While the other 160-acre tracts nearby would run a higher per cent, I estimate that it will all average about thirty or forty per cent. Some will run low and some high.

Q. In speaking of 30 or 40 per cent, you are speaking of the amount of the land that can be cultivated in the quarter section, aren't you?

A. Yes, in each quarter section.

Q. Now, Mr. Martin, upon what do you base your opinion that a family could go on these quarter sections and make a living? State in your own words.

A. For the simple reason that the soil is of good reasonable depth. Some of it is dark, some of it is red

soil, and observations have shown me that it will produce, being settled by people in different localities, growing crops—observation of growing crops and climatic conditions; the fact that a great deal of it is not covered with real heavy timber, and some of it, that that has heavy timber, as a rule has fairly good soil, capable of producing different varieties of crops.

Q. In your travels and in cruising over this land that you have described, did you find settlers or people living and making their homes on any of the lands in the even numbered sections?

A. I have, in a great deal of this territory, found settlers dotted around through the country; not very many in some places, but they would be scattered around. In running the lines in my work, I would unexpectedly come onto a settler up on a ridge, a little home.

Q. Were those settlers confined to land lying contiguous to and along streams?

A. Not altogether. The first settlers were located on the streams, naturally; but others located on the high lands.

Q. You mean the ones that came later, do you, by "the others?"

A. Yes, as a rule.

Q. Now, in this territory that you have covered by your testimony, Mr. Martin, are the lands located along the streams generally taken up?

A. Yes.

Q. By the early settlers?

A. They are.

Q. Where would a man seeking a place to settle have to go to in order to find land to get at a small price?

A. He would have to go onto the ridges, what we call uplands.

Q. Are there any benches through this area?

A. There are—very often find a flat ridge, top of a ridge flat, and containing 30 or 40 acres in a tract; others smaller benches. From the streams up, you will find benches up to the top of the divide in many localities.

Q. When you speak of ridges, Mr. Martin, you do not mean a pointed peak, or a ridge that comes to a precipitous point, do you?

A. No.

Q. Please describe what you mean by a ridge.

A. By saying a ridge, I mean a rolling country, that is not high, not steep and rough. I mean a gradual slope—rolling country.

Q. Did you ever locate anybody on these railroad lands?

A. No, sir. I refused to. I was asked to do so, but I did not want to take people's money.

Q. They have requested you to assist them in getting locations?

A. I expect a hundred persons have asked me to locate them on railroad land.

A. Different persons along the Willamette Valley.

Q. Mr. Martin, you testified that there were but few quarter sections in Douglas County, in the lands that you have described, but what would support a family. Now, what do you mean by that?

A. Well, I mean, you take in a township for basis, I mean that in each township, on an average, there is not more than half-a-dozen in each township, but I would consider would support a family.

Q. That includes even and odd numbered sections, does it, Mr. Martin?

A. It includes all the territory in the township.

Q. Well, in Josephine County this land in 31 South that you have mentioned, how would that run as to settlement, as to the susceptibility to settlement and the support of a family, as compared with the Douglas County lands that you have mentioned?

A. Well, it is not so good there. The land is rougher there. It does not run as high a per cent of agricultural land as in Douglas County, the part that I traveled over. It is rougher, although the soil is very good; but it is steeper, and not so good soil as in Douglas and Lane Counties.

Q. Well, how many 160-acre tracts in each one of those townships in 31 South that you have mentioned, would be susceptible to settlement and the support of a family?

A. The work that I did in the two townships only

covered three quarter sections in one and four in the other. I traveled over other ground making preliminary examinations, but did not cruise only the seven quarter sections, in 31 South—7 and 8 West.

Q. How much of the township did you become acquainted with, Mr. Martin, in your cruising and in your travels?

A. About half of each one.

Q. From your knowledge of this land, what percentage of the 160-acre tracts described as I have mentioned in my previous questions would be susceptible to settlement, suitable for settlement, and would support a family?

A. I think about fifteen to twenty-five per cent of the ground that I traveled over in these townships.

Q. Do you mean that about fifteen to twenty-five per cent of the land is susceptible to cultivation?

A. Yes.

Q. Well, how many quarter sections in these townships, not quarter sections by legal quarter section but by 160-acre tracts, lying contiguous in 40-acre legal subdivisions, would support a family, that is, would be suitable for settlement?

A. Well, I would estimate that about that per cent of the quarter sections that I traveled over would support a family—from fifteen to twenty-five.

Q. That is about one-fourth of them—tyenty-five per cent?

A. Yes, from fifteen to twenty-five per cent; hardly a fourth.

Whereupon witness testified that the most part of his work of cruising was in Lane County, and his testimony with reference to these lands which he has mentioned as lying in Douglas County is applicable to the lands in Lane County. They are very much the same on the Douglas County side of the Calapooia Range, they are a little steeper, but the soil is good. The slope is more gradual on the Lane County side, it is more smooth on the Lane County side of the Calapooia Range, to a certain range on the east. When one goes up towards the Cascades it gets higher and rougher, but from 20 south to 6 west the land will average smoother on the Lane County side than it will on the Douglas side. In townships 20, 21, 22, 23 and 24, along there, the soil conditions are very much the same, only the land is steeper on the Douglas County side. There would not be any material difference as to the number of 160-acre tracts that would be suitable for settlement in Lane and Douglas Counties.

Whereupon on cross examination witness testified that he is forty-seven years old and raised on a farm following stock raising and farming until about seventeen years ago. His father had a pre-emption west of Cottage Grove and came to Oregon in 1857. His father's place was west of Cottage Grove. Cottage Grove is in the center of the upper end of the Willamette Valley and is one of the oldest settled sections of Oregon, and

there were many donation claims taken around Cottage Grove, and as the settlement increased the foothills were taken under the homestead and pre-emption laws. Some of the railroad land that was lying in the valleys and foothills has been sold, a good many years ago, and also most of it close in the valley has been sold and that in the foothills around Cottage Grove very near the railroad has been sold. There is timber on a large portion of the unsold land. The demand for timber claims commenced about 1900, and there might have been some demand for timber as early as 1894. Local people did not pay much attention to these timber lands when the demand first arose. His observation is that about 1900 there were a great many eastern people who came out and took timber claims. All kinds of people. There have been homesteads taken all along as far back as he can remember and after the timber demand became active he observed that a good many homesteads were taken away back in timber country and some built cabins and commuted, paid up after fourteen months, got their patents or final receiver's receipts and moved away. A great many of the individual holdings have passed to the large timber owners. The timber and stone act of 1878 was applicable to Oregon and he knows that a great many quarter sections were purchased under that act, which required no settlement and limited the amount to bona fide purchasers to 160 acres where the applicant could swear that he had gone on or seen the land. A great many of these timber claims thus acquired under the timber and stone act passed into the hands of large timber dealers.

The two largest companies that he worked for were the Storey-Bracher Company and Honore Palmer., the son of Mr. and Mrs. Potter Palmer. He cruised a good part of two years for the Palmer people and a longer time for the Storey-Bracher Company and then for other similar concerns or private individuals in different localities. It is his understanding that Honore Palmer represents himself in making these investments, and he is the son of one of the millionaire families of Chicago. He has met Mr. Sumner, his financial representative, and supposes that he is the business manager in the field and looking over these cruises with him and determine whether they would buy or not. He knows that Sumner bought some lands in the vicinity of Eugene near the Booth-Kelly Lumber Company holdings, and witness helped estimate the timber on them. He forgets now whether there were 1,000 or 2,000 acres in one place. It might have been 1900 acres. He would not be positive. He heard that they talked of building a large mill there, and logging railroad to connect with the railroad operated by the Southern Pacific Company. He could not say that he selected these lands, before they were bought, and that he selected them on water sheds so that they could be successfully logged to one place. As a rule he never asked many questions of these people. They put their data before him and asked him to cruise in certain townships and sections and he went ahead and did the work without asking questions. He asked very few questions. He cruised also for Honore Palmer on the Coast Fork of the Willamette River, which is about thirty miles from

Eugene in the Calapooia Range, a spur of the Cascade Mountains, which spur is at right angles to the Cascades. The elevation of the Calapooia in that locality is not very high, but is rather a low divide, from 1,000 feet on up reaching as high as 2,500 feet. The Calapooia crosses Douglas County and a part of Lane County at right angles to the railroad and connects the Coast Range with the Cascade Range and streams that head in the Calapooia are mountain streams and are swift. He would not classify them with Cow Creek, they are not as swift as Cow Creek. The headwaters of the Umpqua River, North and South Umpqua rise in the Cascade Range, and the Umpqua goes to the Coast. The Calapooia River heads in the Calapooia Range and empties into the Umpqua and is a part or stem of the great Umpqua River. He cruised several thousand acres for the Storey-Bracher people, but could not say how many, but thinks perhaps 6,000 or 7,000 acres. He worked all one summer and fall in one place that he remembers of and cruised a strip two miles wide through two townships in the Calapooia Range but never figured it up to say just how many acres, but it runs into thousands. This was in Douglas and Lane Counties, mostly in Lane County. J. O. Storey is one of the main men in the Company; his associates are Bracher Brothers, he thinks, one or two of them. They are from Michigan or Wisconsin or some of those eastern states, and they have been operating in timber lands in Douglas and Lane Counties several years. He first began work for them five, six or seven years ago. He could not say how many

acres they have in their holdings all together, but he has cruised for them nearly 8,000 or 10,000 acres he would think. He has cruised for Michigan, Wisconsin and Iowa people probably 1,500 acres for them in particular. He has not dealt in timber land very much. He took one homestead in section 30, township 23 south, 1 west in Lane County, but he did not prove up. He claimed his homestead about a year. It had some very good timber on it. He relinquished it to the Government and another party took it up immediately. He had an understanding with the party who succeeded him that he would relinquish to the United States who was to make his filing and he received no consideration for his relinquishment. The party in whose favor he relinquished proved up and the quarter was sold to timber people, there was a timber claim under the timber and stone act put on this homestead, when he relinquished to the United States. They filed under the timber and stone act and paid $2.50 an acre for it. It was several years after the man got his final receiver's receipt until he sold to a timber concern. The party had not lived on the land at all, she got about $2,000 for the land. This was perhaps six or eight years ago, but he could not say. The last knowledge he had, the Storey-Bracher Company, he thinks, owned that land. He is not positive but he thinks they were the last owners.

Whereupon witness testified:

Q. Well now, the locating business of so-called settlers on these timber lands has been pretty active in the

last four years, hasn't it?

A. Yes, sir.

Q. And it is still active, or has it rather quieted down?

A. It is rather quiet now.

Q. About the time this suit was commenced, did it become active, in September, 1908, that was?

A. You mean locating on railroad land?

Q. Yes.

A. I presume it was at that time. I am not positive just when this suit commenced.

Q. Do you know how they did that? These men that were doing the business that you declined to do. How did they do it?

Mr. Robb: Objected to as not proper cross examination.

A. Well, I suppose that they would represent that they would go and look the ground over, and then negotiate with people to locate them on it for so much a quarter, and put up notices, have the people to put up notices, and they would form in associations in different parts of the valley, and have an attorney, and locate land that way.

Q. How much did they charge—these timber locators—for picking out a quarter section and getting somebody to make an application to purchase and locate?

Q. You may answer if you know what the ruling charge was.

A. I think the price ran from $25 to $200, perhaps.

Q. Now, isn't it true, Mr. Martin, that these timber brokers or locators did a thriving business for about three or four years there, and got a great many people to make applications to the railroad company, tender them $2.50 an acre, and charge them for locating on these quarter sections?

A. I think that is true.

Q. The record shows here about seven thousand interveners, all of whom claim they have done that. Is that the way this business was done, as far as you know?

A. I could not say as to the number. I have not looked the records up. But there was a great many that were supposed to locate on these lands.

Q. Would these people go out and build a cabin or shack on the quarter that was selected, and stay there a night or two, and then go away?

A. I never saw anyone living on the ground, but I have seen their cabins in my travels that they built. A great many would not build cabins—just put up notices. I would see their notices as I traveled through the country.

Q. Now, what kind of land was it generally that these people had these cabins on and notices posted, timber or otherwise?

A. More or less timber all through the country.

Q. Wasn't it, as far as you could see, about the best timber that could be picked out on these railroad quarters?

A. Well, the location that I observed as a rule covered about all the railroad land in the country.

Q. In other words, they just plastered this railroad land with these notices and attempted locations?

A. I have seen more than one notice on the same claim.

Q. Now, what were they after—the timber that was on the land?

A. I couldn't say.

Q. Well, the land was chiefly valuable for timber, wasn't it?

A. Not as a rule.

Q. Well, wasn't the timber merchantable that was on it?

A. In some places it was.

Q. Well, as a rule these locations were mainly on the unsold railroad land—all on the unsold land, wasn't it?

A. Why, I would think so.

Q. And the unsold land of this company in the counties where you have been and cruised, was timber land, wasn't it?

A. A great part of it was.

Whereupon witness testified that one dollar a thousand feet board measure is the highest price he knew of a quarter section of timber lands selling for in Lane or Douglas County in the last four years, and that was the stumpage price. He knows of quarter sections of land that would run very close to twenty million feet board measure and at a dollar a thousand stumpage that would be $20,000 for a quarter section, but he has not known of any particular quarter section being sold at that price in that locality. He does not think that the market price of stumpage on these timber lands in that County would average as high as a dollar a thousand. The last land that was bought in Douglas and Lane Counties of which he has knowledge, he thinks, sold, a majority of it, at about fifty cents. He thinks it was gathered in large tracts and the small tracts were grouped together. He does not know of any timber companies which are offering to sell stumpage for fifty cents. He does not believe he knows of any large holdings offered for that price now. He does not believe they are very active at present in buying, there seems to be a little lull, which may be on account of pending graduated single tax measure. Some localities of these lands which he has cruised in Douglas and Lane Counties in 160-acre tracts in legal sub-divisions would in his judgment be twenty-five per cent agricultural, others higher. He thinks thirty to forty per cent. By agricultural he means land that is in good localities with good climatic conditions, low altitudes, smooth enough to cultivate, the soil being good,

clear of rocks and such as that.

Whereupn witness testified:

Q. Well, you don't mean that these timber lands are agricultural do you—claims that would go twenty million feet of fir timber—you don't mean that is an agricultural tract, do you, in your classification?

A. I mean that many of the best timber lands are on good soil.

Q. Well then, you would classify a quarter section that had twenty million feet of good saw timber on, if the soil was good, and if it was sufficiently level that it could be plowed over after the timber was removed and the stumps cleared, you would classify that as agricultural?

A. I would.

Q. So that when you say lands are agricultural, or a certain per cent is agricultural, or a certain per cent of quarter sections is agricultural and capable of supporting a family you mean after the timber is taken off, that it has a soil that could be used for some agricultural purpose? That is what you mean?

A. Yes, I classify it as agricultural lands, for the simple reason that it is capable of producing, after the timber is taken off, producing different kinds of crops.

Q. Have you ever had any practical experience in living on a quarter section of this timber land that runs twenty million feet to the quarter, or that is commercially valuable for timber, and tried to make a living on it?

A. I have lived on land very similar. I did not live on land that grew that heavy timber. But I have passed over many of them.

Q. Have you ever known of anybody up in that country that had a quarter section of timber land, that concluded to and was clearing it, rather than sell it for the timber that was on it?

A. Yes, I know of quite a number.

Q. Just name anybody that you know that is on a timber quarter, that is in good faith going ahead, cutting down the saw timber, grubbing out the stumps and burning up the logs, and making any considerable progress in making a farm out of it, instead of holding it for the timber. Just name them. Give the location too.

A. Well, in township 22—well, I would say 21 or 22 south, 4 west—I am not positive now. It is in section 12. Mr. Aaron Kelly was living on a quarter there, doing my work in that vicinity—but he is dead now—clearing up part of it, raising different kind of crops on it.

Q. How much did he have cleared on his quarter section?

A. Oh, probably from five to ten acres.

Q. And what did he do with the balance of the 160 acres?

A. He hadn't done anything with the balance at that time.

Q. How far from the railroad was that?

A. About two or three miles.

Q. And how long had he owned this quarter section? How long had the title been out from the United States?

A. He had been on it a few years—I couldn't say how many.

Q. Do you know whether it was a homestead, or pre-emption, or timber claim?

A. I think it was a homestead.

Q. Had he got his title?

A. No, not at that time.

Q. Then he couldn't cut the timber on it, could he, except for domestic use?

A. Only for his own use, that is all.

Q. Did he have a family there with him?

A. Yes, sir.

Q. Now, what kind of crops did he raise?

A. He had hay and different kinds of garden.

Q. Was he on a little stream?

A. Well, no; he was on a bench, upon a hillside.

Q. Did he have any living water, running stream there?

A. A spring, I think.

Q. Now, did he have any stock?

A. A few.

Q. What kind of stock?

A. Cattle, and perhaps a few horses.

Q. How many cattle did he have, would you say, approximately, now?

A. Well, I couldn't say.

Q. Forty or fifty head?

A. I think not that many.

Q. Were they milk cows or simply beef cattle?

A. Some of them were milk cows.

Q. And was he doing a stock business?

A. He had a few stock, was living there, making a living, and——

Q. Did his stock range out?

A. I simply meant he appeared to be making his living there for his family.

Q. Did he range his cattle over the unenclosed lands outside? Did they go over wherever they wanted to?

A. Those that were turned out could range wherever they wanted to.

Q. Didn't he turn out every one of them, except a few cows that he kept in his enclosure for milk?

A. I think perhaps most of them ran on the range.

Q. How many horses did he have?

A. Not very many.

Q. He had just a team, didn't he?

A. I presume two or three.

Q. He probably had a pony that he rode when he went to town?

A. He didn't have to ride. He could go on a wagon.

Whereupon witness testified that the nearest good trading point of this party was at Cottage Grove, about six, seven or eight miles away, southeast, between the Southern Pacific railroad and the Coast Fork of the Willamette. Comstock and Anlauf are on the railroad and this piece of land was on the Lane County side west of the road and runs pretty close to 1500 feet high from 1200 to 1600 feet, along there. Some of it was very fine timber, but some of it not heavy. The territory of which he is speaking is not in the Comstock locality but across the Calapooia on the Lane County side. It has not been cut off but is in its virgin condition, but is in the same general character of land. The way he went in when he cruised these timber lands on the Santiam, on the Little North Fork of the Santiam above Mehama, he does not know what the exact distance according to air lines would be from Albany, but they were quite a ways east and north from Mill City and above Elkhorn, on the western slope of the Cascades, next to the Cascade Forest Reserve. The settlement, as a rule, in that locality, was not on the best timbered lands but on the ridges and rivers. Some of them were old settlers. Some had not been there many years. One would find an occasional cabin that was not occupied, but not so very many, they were mostly occupied. On the even sections in these tim-

bered lands the settlements extended all the way along the two streams, the North Fork and the Little North Fork, and on both sides of the divide, the low divide between the Little North Fork and the North Fork, and on the other side of the divide, between the Olalla and the Little North Fork very close up to the summit, and he would presume there were a dozen settlers actually living on their quarter sections in that region that he saw, and in most instances they were men with families. He thinks the settlements in the timbered areas with which he is familiar in Douglas and Lane Counties were greater in some of the other localities than that, in proportion to the area he covered. Eliminating the settlers down in the valley in the foothills of Lane County where he has described the sections or territory where he had cruised he would think there would be five, maybe more, to a township, and there is not much difference as to the lands that he has cruised in the eastern part of Douglas County, they were about the same; he thinks the settlement was a little thicker on the west side of Lane County on the Siuslaw as a rule. There was a good deal of settlement on the Siuslaw, Smith River and the Umpqua. The Siuslaw heads near Cottage Grove about twenty-two miles from Eugene and runs from the western part of the county on west to the coast. It does not run through the eastern part of the county. He does not think the timber on the Siuslaw is quite as good on an average as on the Nehalem. Many parts of the little valley along the Siuslaw is covered with heavy timber. Some of it has no timber, some of it is open. He knows the Siuslaw

Gorge through which the Willamette Pacific Railroad Company is building a tunnel and he understands it requires tunnelling to get a railroad through; some places of the Siuslaw River are in a gorge and some places the land is flat on each side of the river for a ways. There is a great deal of land in that section that is timbered. A great deal of it has been burned off. Most of the burned areas was once covered heavily with timber and is reputed to have been burned prior to the coming of the white man, about sixty or seventy years ago at least. The burn is a very large one. He measured one fern sixteen feet high in that locality. The soil is red and dark gray and affords a great deal of food for cattle in that locality. It grows pea vine, gourd vine and clover grows very fine in there when it is sown. Some of the burns are cultivated, but not a very great proportion in that locality. Most of the burn is in a state of nature as left by the fire to the growth of small brush and stuff, such as he has mentioned. The elevation is a great deal lower than 2500 feet. It is not that high as a rule in the Siuslaw country. When one gets up on the high ridges between the streams one gets that elevation, but a great deal of the country is lower than that. He only knows of the purchase of the large timber holdings by the Johnson-Wendling Company in the Siuslaw country this year by reading about it. He has cruised a great deal of the timber during the last twelve years and before that worked some at surveying and different things. He never cruised Douglas and Lane Counties for assessment purposes. The three methods which he uses in cruising

are what are known as single, double and four times running through. He plats the ground, marks the streams and takes the elevations. He writes out his reports in the evening after he gets through his work on blank forms. In his reports he reported anything about soil conditions. With reference to noting the topography of the lands that he cruises, that depends upon the instructions that he receives. He marks the streams in all places and in a majority of cases the people employing him ask for the character of the land. A great deal of the lands he is employed to cruise are timbered lands. As a rule he gets the heighth of trees, while cruising, from measurements of down timber. In some places on these timbered lands the timber is fully matured and in others it is younger and still growing. After the tree becomes fully matured it begins to decay, not so very fast on the start, but as it gets older it decays faster. He knows of some of the full grown timber offered for sale on the Forest Reserve, but thinks that the United States asks $1.50 per thousand for fir timber but they have not been making any sales that he knows of. There are certain restrictions that they compel a person to comply with in the logging of these grounds, and he does not know whether they are too strict or whether it prevents the sale or not. He could not say whether it is the price or the regulations as to the method of leaving the land that constitutes the objection.

Whereupon on re-direct examination the witness testified that lands containing a stand of 20,000,000 feet to 160 acres are very unusual. There are very few of

such lands in Douglas or Lane Counties and there is only one that he knows of in these Counties that is that heavy. He has never seen another claim that had that much timber on it. The timber growth is not uniform or the same in all places. It is very irregular. The timber is not generally heavy as a rule. There is a great deal of light timber, open spots and then one will find a heavy forty possibly, a heavy quarter, but not every section. There is more or less light timber and open spots, some of which would be easy to clear. Since the demand for timber became brisk a comparatively few years ago, there has been an increased demand for agricultural land and for lands that could be cultivated and he has had many applications for land suitable for homesteads in the vicinity of these lands about which he has testified. A great many of these people told him that they wanted these lands for homes, that is these people who sought to engage his services to find them agricultural lands. The demand for lands for homestead purposes in the western part of the State of Oregon is quite general now and has increased during the last ten years. Very little of the public lands are left. It has practically all been taken up. In some cases he knew that these abandoned cabins in the timber of which he has spoken were on homesteads, others he had no way of knowing and he did not inquire, but in some cases he knew that they were on homesteads. He does not think it has been the general practice of the citizens of Oregon to file homesteads on lands and immediately abandon them, after making proof and sell them to a timber company. There were very few of these

abandoned cabins. He knows some of the parties who have filed on homesteads and then abandoned their cabins as he has mentioned. He wishes to say in regard to these abandoned cabins that a very large proportion of them, the majority of these cabins that have been abandoned, the land had been bought by companies, the people sold out, moved to towns, a great many of those who were bought out went to towns. They did not just get up and leave the lands, they sold their lands after they had made their proof, but that was unusual and there were very few of these abandoned homes that he found. He knows of the scrip locations on these lands and knows that scrip was used on a number of even sections, quite a good deal of scrip. Practically all of the streams in this country have their sources in the mountains. 2500 feet elevation on the Calapooia Range is the highest point. The largest burn he knows of in the Coast Range in Lane or Douglas Counties is between the Siuslaw and Smith River and is the burn mentioned containing this high fern. It does not contain very much merchantable timber, but small growth growing up with a small growth of timber. The old settlers claim that the Indians burned this land over in the early days, burned this off every year and kept it burned off. This main big burn was burned off more than fifty years ago, he thinks, although he has no actual knowledge, and no one else he thinks has any actual knowledge when it was burned. The land about which he has testified has increased in fertility but he does not think there has been any material change as to the mountains and the general susceptibility

of the land to settlement since this grant was made. The remainder of these lands about which he has testified besides the per cent of lands that could be tilled, could be used for grazing land. The soil is very good on a great deal of it, but the steeper part of the mountains would be too steep to plow, but it would raise good grass. Fruit would grow well on this land, if it was not too steep to be cultivated. As far as cultivation is concerned it would grow good fruit. He has surveyed for the Government in Township 20 south, 10 west on Smith River in Douglas County. He thinks the ridges divide there at that point and the line follows the Siuslaw a ways and then jogs up on the ridge.

Whereupon witness testified:

Q. Now, Mr. Martin, there has been some testimony in this case, as to the reforestation of this land after the timber is removed. What, in your opinion, is the best use that could be made of the land after the timber is removed from such as is covered with timber?

A. I will say that I have worked for the government on the reserve, and I would say that the agricultural products from this land would be much more valuable to coming generations than the timber by being reforested.

Q. How long would it take to reforest this land? That is, for the timber to attain such growth as would make it merchantable timber, if you know?

A. It takes about two hundred years.

Q. What has been the effect, Mr. Martin, of the sale of this land to large timber companies, and the withdrawal of the lands from the general public market, if you know?

A. It has retarded the settlement of the country, kept back the development of the territory by people not being able to settle on the land.

Q. Are these lands close to transportation?

A. A great deal of them are.

Q. Situated as the railroad lands are in alternate sections, what, if any, effect would that have with reference to the settlement of the even numbered sections?

A. It has retarded the settlement, of course, of the other land to some extent.

Q. In what way, Mr. Martin?

A. Well, on account of causing a more thinly settled locality, you know, in developing schools and such as that, and highways, roads.

Whereupon, on re-cross examination witness testified that what is commonly known as lieu land scrip has been used a great deal for the purpose of acquiring these timber lands in the even sections, in the territory with which he is familiar; he has used some of it himself. J. W. Parrish has used some and he knows by hearsay about the large companies using it, and he knows it has been done according to general information. The last scrip he used for this purpose cost $8.75 per acre. The Northern Pacific Railway Company has located some of

these timber lands in the even sections with scrip, it was in lieu of the Rainier mountain country in Washington, scrip that was given them on land in the Rainier Mountain country. It was put into a reserve, they could locate this scrip on Oregon lands and they got the scrip in lieu of lands granted to the Northern Pacific Railway Company under the Act of July 2, 1864, and could locate the scrip in Oregon and they located a lot of these lands in Douglas and Lane Counties. He could not say exactly how many acres they had scripped in Douglas County on the even sections of these timber lands. Their holdings in the Umpqua Reserve and Cascade Reserve are quite large. The dividing line between the two reserves is the watershed between the Willamette and Row rivers, two tributaries of the Willamette and there are several thousand acres they have scripped, and they have scripped also in the even sections within the indemnity limits of this railroad grant in these counties, but he does not know as to the odd sections. The brown lands shown on "Defendants' Exhibit 259" unavailable for indemnity selections within forest or other reserves from township 17 south nearly the whole distance down to 31 or 32 south in the indemnity limits, designated as lost to the company by reason of being appropriated, or withdrawn, or under reserve, is similar to the land adjoining it in the twenty mile strip and he does not know the exact number of acres in Lane County which the Northern Pacific Railway Company has scripped. He did know the cruise, but has forgotten now, it was a large amount. He did not directly cruise for the Northern Pacific Rail-

road Company, but did work for them under other people, under the cruising party a short time. He arrived at the time it would take to reforest a piece of this timber land, which he says would be two hundred years, by calculating the growth of the timber in different localities, counting the grain to get the number of years it requires to get a certain size to make it merchantable timber and he figures that some of these largest trees may be two hundred years old, or more than that. The oldest tree that he can remember, in these forests, using the accepted method of arriving at the age of trees, is something over two hundred. There are some second growth fir trees in some parts of the Willamette Valley that are not over fifty years old and are eighteen inches through at the butt. The growth of such a tree depends upon the density of the forest, where it is thicker, it does not grow so fast.

Whereupon witness testified :

Q. Do you remember seeing a forest east of the railroad, between Woodburn and Gervais, on the east side of the track as you go south, that forty years ago was just little fir trees, not much higher than the ceiling of this room, that today are seventy-five feet high, and the trees, many of them, are eighteen inches at the butt, and they stand so thick that the sun very rarely penetrates into that grove?

A. I don't know of that particular grove, but I know of others similar.

Q. I call your attention to that grove because it is

along the railroad, and well recognized, and known by everyone who is interested in reforestation?

A. Yes, sir, I think I have noticed the grove.

Q. Well, now, those trees, while not desirable for large mill timbers or mining timbers, will make saw timber for most uses, do they not?

A. To get timber of that size, that should be cut and used to advantage, it has got to be in what they call old growth, very thick, and where it grows tall and slow. The young growth that comes up fast don't make good timber. It don't make good lumber.

Q. That is to say, the timber at fifty years of age is not so good for all purposes as trees that are one hundred years old.

A. No, it is not good, as a rule.

Whereupon upon re-direct examination witness testified that timber that grows rapidly usually is trees that stand by themselves, and are swell butted and the grains are coarse. The other timber is tall and small and the grain is fine and much stronger and takes on a good finish, while the other is hard and coarse grained, and has not the strength the other has. It is considered waste to cut it at that stage. This Northern Pacific scrip, he thinks, can be located on unsurveyed land and was largely located on unsurveyed lands in Oregon. He has no actual knowledge that Northern Pacific scrip has been located on the ten mile indemnity limit of this grant.

Whereupon witness testified:

Q. Now, Mr. Martin, if a settler would go on this land, taking a 160-acre tract, how could he make a living? In what manner?

A. Well, when he first settles on the land, when it is covered with brush and timber, in order to make a living for the first few years, he could put goats on it, and raise them at a very good profit. 160 acres of most any of this land will keep two hundred head of goats. Their food is nearly entirely brush, browse off the young brush and vegetation—requires very little feed for them in the winter in the low altitudes, and the returns on the wool and increase are very profitable.

Q. Is the goat industry carried on to any extent in the vicinity of these lands?

A. The goat industry is scattered all over Lane County and Douglas, as well as farther north.

Q. Now, would they require any food, other than the growth on the land, during the winter season?

A. I have wintered 225 head of goats several winters with less than five ton of hay. Other winters, when they have a little soft snow, why, it requires some feed for a few weeks. A few tons of hay will carry two hundred head through very easily.

Q. Would these people have to buy their hay?

A. Well, they can raise it.

Q. Is their land situated in 160 acre tracts, sufficient land to raise hay that would support a herd of goats?

A. There are very few of these 160-acre tracts but what have light patches of timber and brush that can be cleared easily. The heavy tracts of solid timber over 160-acre tracts, over the entire lot, are very scarce. It is spotted all over the country. And there are always little benches of light timber and brush that can be cleared, and bottoms, small bottoms on the head waters of the streams can be cleared very cheaply, and produce good hay—any kind of agriculture.

Q. Are there many of these spots scattered through the timber of Lane County, that you have spoken of?

A. They are all through it—scattered all through it; some of them quite large—forty acres sometimes.

Q. Would the income from the raising of goats maintain a family?

A. It will.

Q. Support it?

A. Yes, sir.

Whereupon on re-cross examination, witness testified:

Q. Suppose you had 200 goats on each quarter section of this land, would you have the land all fenced to take care of them?

A. It would depend on whether I had to or not.

Q. I know, but suppose that you had to enclose your premises, to confine your pasturage to your own quarter section, and everybody had 200 goats, on each

quarter section, do you think that would be at all practicable, Mr. Martin?

A. I think it would support them easily.

Q. What do these goats raise or produce that is marketable?

A. Well, an increase in the stock.

Q. It is called mohair, isn't it?

A. Yes, sir.

Q. And they raise about how many pounds of mohair to a goat, the best goats that they have in this country?

A. Well, it ranges all the way from 3½ to 5 pounds to the head, owing to the grade.

Q. It takes a mighty good goat, doesn't it, to bring five pounds of mohair?

A. Not a very good Angora to raise five pounds.

Whereupon witness testified that he does not know how many goats there are in Lane County. He knows of one man near his town that owns over five hundred head. He supposes that Polk County is the best goat county in the State. He has heard that there are a great many goats in that county. He knows that goats eat fir, they prefer hardwood browse but would eat the young fir. He has had them to eat it in his own range. They prefer vine maple and hard woods of that description, they really prefer a variety; they browse on all kinds of brush. They will even eat poison oak, and he

has slashed in ground and had young brush start, fir brush, very thick on the ground, and put them in the pasture and cleared it entirely with goats. They would kill it out. They are used to grub any kind of land. They prefer hard wood browse. The average clip of mohair is more than two and a half pounds per head. Every city and town in his locality buys and ships mohair; a greater part of it is sent to London. The price ranges from twenty to forty-five cents per pound and he thinks the average for the last few years has been in the neighborhood of thirty cents per pound, maybe a little more than thirty cents per pound, so that if a man had two hundred goats and raised five pounds to each, that would be one thousand pounds of mohair, which at thirty cents would be worth $300.00.

Whereupon, on re-direct examination, witness testified that if one takes a mixed herd of goats that is usually raised by the rancher he would raise abount one hundred head as the natural increase, worth from $2.00 to $5.00 a head, owing to the grade, and he always sold his best goats at $5.00 a head. For the finest breed of goats, the blue ribbon variety, one would pay several hundred dollars for some of them. These fine goats eat brush just the same as the others. He has no interest in this suit other than as a citizen of the State of Oregon and did not volunteer to come down here but was subpoenaed.

Whereupon, upon re-cross examination, witness testified that he was interviewed by the Government's rep-

resentative at Cottage Grove and made a written statement of what his testimony would be several months ago and later was subpoenaed and brought here as a witness.

Whereupon A CREASON, called as a witness on behalf of complainant, and being duly sworn, testified: That he is fifty-six years old, resides at Roseburg, Douglas County, Oregon, and has lived in Oregon, most of the time in Douglas County, for thirty-three years. Roseburg is near the center of the county, a little north of the center. He has been principally engaged in the stock business since he came to Oregon, and has owned and operated quite a bit of acreage in that county. He has had no experience in the lumber or timber business, other than to buy lumber needed for building purposes, or for fencing. He never owned anything that he figured as timber land, except a quarter of a section in 27-1 West. He has been handling cattle and sheep principally, but some horses in his stock business, and raised them to sell. One of his stock ranches consisted of 1,071 acres and adjoined the City of Roseburg; another, about nine miles east of Roseburg, consisted of 665 acres, another about two miles north of Roseburg consisted of 361 acres, and another consisted of 628 acres, eleven miles west of Roseburg, in Township 27-7; he has some other small pieces scattered around the country. He went to Douglas County in 1879, and he thinks the railroad was constructed to Riddle or Glendale at that time, but he would not say positively as to that. For a distance of forty miles south and twenty or twenty-five miles north of

Roseburg, he has been practically all over, and is acquainted with that territory; and has been clear across the state. He has been frequently over that country the last ten or fifteen years, but has never done any timber cruising. The territory he speaks of extends clear through to the Coast. He is a little bit acquainted in Lane County and knows some of the land in that county directly west of Eugene. He owns 160 acres in there. The railroad land adjoins that, and he has been over that; it is within the limits of the grant and he was told that it was railroad land. He has not been very extensively over Lane County, but has observed the land in that county in the vicinity of this quarter section, of which he speaks; from Albany west, along the Mohawk and Corvallis, and along through ten or twelve miles, he would say, west of the main line of the Southern Pacific, he has been through that a few times buying goats and stock, and riding over the country, and hunting and fishing some, but not as extensively as he has been in Douglas County. He has been up and down the railroad from Portland to the southern boundary line of the state, more or less, and thinks that he has become familiar with the general development of the industrial and commercial resources of Oregon in these vicinities that he speaks of.

Q. State whether or not you know the general method that has been pursued by the railroad company with reference to the disposition of its lands in these communities that you speak of?

Q. During the time that you have resided in that

vicinity.

A. Very much to the disadvantage of the settler.

Q. The question is, do you know?

A. Yes, sir; I know.

Q. State what it is.

A. The country has been held back to a great extent by the settlers being only allowed the even sections, and the odd sections unimproved, disadvantages for schools, for roads, and every other convenience that would be of advantage to the development and the settlement of the country.

Q. Does that observation apply to the general territory that you have described that is within the limits of the railroad grant, or to some particular part of it?

A. To practically all that I have been over.

Q. Do you know the general character of the soil within this territory that you have spoken of? I refer now always to the land within the limits of the railroad grant, unless I otherwise designate.

A. As a whole, you mean?

Q. Yes.

Mr. Fenton: Which he has seen.

Mr. Townsend: Yes.

A. Yes, sir; I am acquainted with it.

Q. Acquainted with the general lay of the country as to elevations and other natural conditions?

A. Yes, sir.

Q. Are you acquainted then with the general question of the adaptability of that land to cultivation and the raising of horticultural and agricultural products?

A. Yes, sir; I think I am.

Q. Are you acquainted with the value of that land for the purpose of settlement and the maintenance of families of the settlers?

A. Yes, sir.

Q. What have you to say as to the quality of that land, considering now the character of the soil, the way in which the land lies, and all other conditions, natural conditions, as to its availability for the purpose of settlement, and the use of the land for the purpose of maintaining and supporting a settler and his family.

Mr. Fenton: Objected to as calling for a conclusion of the witness and not for specific statements of fact, and as therefore incompetent.

A. The land as a whole is very good. It is somewhat broken, but I would say 75 or 80 per cent of the whole is good agricultural land, capable of making many good homes for people that are willing to go into the frontier and hew out a home, clear up the land, take their families, and develop the country and make homes, and could make good livings.

Q. Have you had any experience with reference to the use of logged off lands for agricultural and horticultural purposes?

A. Yes, sir.

Q. Have you taken that into consideration in your previous answer as to the quality of this land?

A. Yes, sir. What I mean by agricultural land is land that is suitable for farming by the work of man cleaning the brush off, timber off, such like as that. None of it can be farmed—I say none of it—a great deal of it cannot be farmed if he had to go right into the timber and stumps to start with, because that has got to come off first. Some of it is open, ready for use at the present.

Q. It has been testified to here, Mr. Creason, that there is not a quarter section of land within this grant, referring now to the unsold lands still held by the railroad company that would support a family. Is that true?

A. Absolutely false.

Q. What proportions of the quarter sections with which you are familiar would support families, if properly handled?

Mr. Fenton: Objected to as calling for a conclusion of the witness without any statement of facts.

A. Their land as a whole, the even and odd sections that I have been through hunting and fishing and running stock, it would be hard for me to pick out an odd section from an even one, but I have some land of my own that the railroad company has land adjoining it which I have leased, or that my man on the place has

leased, that I could say positively, because I have been right on the land and could name the quarter section and the forty, etc., but take the whole back a ways, it would be hard for me to say which section I was on, whether it was an even section or an odd—but take it as a whole, I will venture to say there is not a quarter section in the territory I have been over that would not make some man a reasonably good home; some better than others; but any of it he will find more or less farm land or agricultural land.

Q. Are there any settlers within that territory, speaking now with reference to the limits of this grant?

A. Yes, sir.

Q. Now, have you proceeded west from the grant to the Coast?

A. Clear to the Coast, yes, sir.

Q. State whether you found any difference as to the settlement of the country as you left the grant and proceeded to the Coast.

A. You get out of the grant limit, and you find it much thicker settled than you do in the limit of the grant.

Q. Why is that?

A. The only reason I can account for it is, it has better conveniences—they can have better roads, more settlement; can have schools where they cannot where it is so thinly settled.

Q. Well, what has brought that condition about?

A. Government lands, people are allowed to go and take it as homesteads, pre-emptions, and various ways.

Q. Well, why hasn't the same thing occurred within the limits of the grant?

A. The last number of years the railroad company has absolutely refused to sell it, or have to me, at any rate, as I have made application for it.

Q. In your judgment, if the railroad company had disposed of those lands to settlers, would the same conditions exist within the limits of the grant that you found immediately adjoining it on the west?

A. Much better, because the climatic conditions are much better on the east side of the Coast Range than they are on the west side of the Coast Range. I think it would have been more thickly settled.

Q. Now, how with reference to the sale of these lands in large quanities to timber buyers and others—are you acquainted with that general condition?

A. Not positively. I know in a general way of it being sold in large tracts.

Q. What effect, if any, has that had upon the settlement of the country?

A. Very much held the country back, on account of those people bought it and were holding it for speculative purposes, I presume, or at least they are holding

it and not selling it; no settlers on that land. There are none of those large tracts that I know of that have been bought that ever anybody has allowed any settlers to go on.

Q. Now, in your testimony with reference to the availability of this land to settlement, state whether or not the same thing would be true after the timber is removed, referring now to such lands as are timber lands?

A. Yes, sir.

Q. Do you know of any of these railroad lands that would be valuable for the sole purpose of settlement after the timber is removed?

Mr. Fenton: Objected to as immaterial.

A. Except in a general way as I speak of, with the exception again of these tracts that I have leased, or that my men have leased. But outside of that, to go on any one section to know positively that it is a railroad section, I would not know whether it was an odd one or an even one. But as a whole, why, it would be thickly settled in places—people would be glad to have it, many people.

Q. Do you know, from your own observation at Roseburg, and in that vicinity, whether settlers have come in there and tried to get any of that land?

A. Yes, sir.

Q. To what extent and when? Describe it in a

general way.

A. I know of two men about eighteen miles, I would judge, east of Roseburg, on the North Umpqua River, or close, by the name of Barker, that went in there before the land was surveyed, taking a squatter's right. Afterwards the land was surveyed, and they found that they were on railroad land. They had made homes there, they had cleared up some land, and calculated to prove up on it as Government land till it fell to the railroad company, and since that time they have never been able to get a patent to it. One of them lives in Roseburg at present. The other, a brother of the same man, is dead. They both told me——

Mr. Fenton: Objected to what the witness was told by these people as hearsay.

A. I saw them on the land personally myself.

Mr. Fenton: I do not object to that. I object to what they told you.

Mr. Townsend: Go ahead with your answer.

A. Both of them have told me that they had tried time and again to get the land, and were unable to secure it, and eventually moved off.

Q. When you saw them on the land, what were they doing?

A. Farming it, had a little stock; both of them good hard working men; had families—one of them had a family—the other, I believe, did not, but one of them I know did, because one of his sons is working for me

now.

Q. Do you know whether they had any other means of livelihood than the product of the land upon which they were settled?

A. I think none whatever.

A. How long did they live there?

A. They lived there—well, it is hard to say, but I would say eight to ten years.

Q. Do you know the description of that land?

A. No, sir; I couldn't tell you the exact description, but I can give you very close to it. If I could have the map, I could show you almost exactly.

Mr. Fenton: There is a map right here, Mr. Creason.

A. (Referring to map.) It would be right in there. Before the country was surveyed they went in there. I wouldn't say what section it was in, but it is right at the old Patterson mill and a little above Glide.

Q. Now, how about recent years? Do you know whether there have been any settlers coming into Douglas County, particularly coming to Roseburg?

A. The last seven years there has been the greatest immigration of settlement that Douglas County has ever had, and the last five especially; in fact, for the last ten years, but the last settlement, people are coming all the time in the last five years, there are a great many of them that come looking for homes.

Q. State whether, in your judgment, the railroad lands situated in Douglas County, and particularly those within the limits that you have described, could be disposed of to settlers and reduced to settlement?

A. Yes, sir; very readily.

Q. It has also been testified to here, Mr. Creason, that these unsold lands of the railroad company that are involved in this suit, including the lands in Douglas County, together with the even numbered sections that intervene those railroad lands, are not good for anything excepting the growing of timber, and that the only use, practical use, that can be made of them, is to cut off the growing timber, and then hold them for the purpose of reforesting them. Is that true, in your judgment?

A. Absolutely no truth in it. It would make hundreds of good homes if they would allow people to have it.

Whereupon witness testified that his knowledge of the lands as to sections is limited to the few tracts that he owns individually; these he knows exactly, and the adjoining land he also knows; the other lands within the general boundaries, that he mentioned, but without reference to their legal subdivision, he also knows; and he knows the character of the land; and it is of the same general character all the way through, with the exception of a little bit through Cow Creek Canyon, which is the roughest section of Douglas County.

Q. I was going to ask you about that. The land

is visible from the train as you go along the Oregon and California railroad there in Douglas County, how does it compare with the remainder of the land in Douglas County.

A. South of Roseburg it goes through the roughest section of the country; north of Roseburg through some of the best.

Whereupon witness testified, that he never located a man on a piece of these railroad lands in his life; he did apply to purchase some of it himself; he applied individually twice, once by correspondence and another time by offering the actual cash. He made an application for a number of friends, probably a hundred, he could not say positively, but in the neighborhood of a hundred friends, possibly more, which applications were refused. He knew the character of a part of these lands only that were applied for, and knew positively the piece that he applied for; he had seen the land. The land was of such a character that it could have been made a home of, and would support a family. He heard part of the testimony of the preceding witness, Mr. Martin. A settler when he first goes onto a piece of land, has always the hardest time when he first settles on it to make a living; but if he will go on there, raise a garden, take a little stock, for instance goats, as this man suggested, there is no reason why he could not make a living on any quarter section there is in it. It would not be a practical thing to raise goats, but to clear the land and get rid of the goats, because after the land is cleared the goat is

not as much profit as when the land is uncleared. The goat is a brush animal almost wholly, or nearly so. The goat helps to clear the land very materially, in the way of taking out the small brush or any shrubbery that he can get at, anything that is within his reach. The greater portion of this land after it is cleared is good for any kind of farming that one wants to do—stuff that will grow through Southern Oregon, any kind of garden stuff, fruit and berries of all kinds. Whereupon, on cross examination, witness testified, that he owns in Douglas County 665 acres in one piece, 361 acres in another, 628 acres in another, 161 acres in another, and he has sold off possibly two-thirds of the 1,071 acres which he formerly owned next to Roseburg. The farthest tract away from Roseburg is in Section 2, Township 27 South, Range 1, about thirty miles. Some of the other is in the town of Roseburg; that is a part of this 1,071 acre tract. Part of it is eleven miles west of Roseburg, nearly due west, and part of it from nine to eleven miles east, at the head of Oak Creek, which empties into the North Umpqua, about north of Roseburg, over towards Winchester. The South Umpqua River, for about three-quarters of a mile, runs through Roseburg. Part of this 1,071 acres which he owned, has been patented thirty-five or forty years, and was taken under the donation land law, many years ago, part of it, not all of it, 160 acres of this land, seven miles west of Roseburg, was a donation claim; this which is thirty miles away from Roseburg was a homestead, taken by a man by the name of Strader, witness

has owned it three years. Strader first went on this homestead about nine or ten years ago, and lived on it a little over seven years before he got his patent; it was not surveyed when he went on it; there was some timber on it and some open land; he raised quite a bit of garden stuff and some timothy; there was no road to it; it is not occupied now; he bought the improvements from Strader, which was on the place, but they are not occupied; the improvements are the ones that Strader made. Witness has not made any improvements himself, but has kept the place leased to the Forest Service for two years, and occupied, he thinks, by a ranger, but could not say, but that is his understanding. He leased the whole 160 acres for what the taxes amounted to, some $14 a year, last year. All these other lands, other than the homestead, he used for stock purposes and they are more or less timbered, with fir and some oak; and are on what they call hill land. His principal business is that of a stock man, but he hasn't a great deal of stock. He keeps the 628 acres leased, the 665 acres leased and the 361 acres leased to people for stock purposes by them. As rental for these leased lands he gets part of the stock and of the produce that is raised on the lands. He leases on what is called one-third. He gets as rentals more than three per cent on the value of his land, after paying the taxes. Five per cent net, after paying taxes, is good fair profit for a farmer. Eighty acres of one of these tracts of his, east of town, was railroad land, but he does not know how long ago it was purchased from the railroad company. A man by the name of

Shoemaker bought the land and he thinks it must have been sold less than thirty years ago, possibly twenty, he could not say. He does not know what Shoemaker paid for that eighty; it has good timber on it, quite a bit of it, and it is saw timber. He thinks Shoemaker bought it directly from the railroad company, but he does not think Shoemaker lived on it; in fact, there has never been any improvements on it. Shoemaker lived adjoining this tract, and used it in connection with the lands he had adjoining, and used it principally for stock purposes. There is a part of the land which he owns that would be worth two or three thousand dollars an acre and part of it not over twenty or twenty-five dollars an acre; the land north of Roseburg is valuable land. The land on Oak Creek is about nine miles from Roseburg, and the farthest is about eleven miles; and it is worth about twenty or twenty-five dollars an acre. He has about thirty acres in cultivation in the 361 acre tract, and about sixty acres in the 665 acre tract. Practically all of these two places on Oak Creek is fenced; he does not know of a forty acres that lays out open on the range. He knows of cattle men, stock men and sheep men herding their stock into the mountains or foothills on the open lands, and he does that himself. He gets permission from the Forest Service to drive his stock into the Forest Reserve. When he has them down in the lower part of the country they are in inclosures all the time. The number of acres that they run over when they are in the Forest Reserve depends on the amount of stock one wants to run as to the amount of land that the Forest

Service will set aside for a person. It is hard to say how much he did have in the Forest Reserve; he had three locations where the area was quite large, but the grazing part of it, where the best grass was, was not so large. By quite a large area, he means several thousand acres. The Forest Service does not charge him by the acre, but by the head; that is, five cents for sheep and twenty-five cents for cattle; and one can go in in May and stay until November, and pay five cents for sheep and twenty-five cents for cattle for the season. He does not think the Forest Service leases any land at all. They charge for a permit; the man that runs the stock on the lands pays so much a head. He does not know of any one, outside of the Forest Service, that leases land, or gives any permits for leasing lands, except in the valleys where he lives, one would lease from his neighbor. Roseburg is one of the old settled sections of Oregon, and he thinks the Umpqua Valley has been settled for about fifty years. Oakland has between 800 and 1000 inhabitants, and is eighteen miles north of Roseburg in an old settled section. He was never around Drain a great deal. He went directly to San Francisco and made the applications to purchase the railroad lands, which he applied for, and made these applications to Charles W. Eberlein for 160 acres, being the SW¼ of Section 23, Township 27 South, Range 9 West, he thinks it is. He had been over that land before he made his application; it is rolling land and has fir timber on it principally; and he offered to pay Eberlein $2.50 an acre for it.

Q. And you did that under the claim that you were

entitled to it under the act of April 10, 1869?

A. I thought I was; yes, sir.

Q. Yes, I know. Were you advised to do that by Mr. Leavengood?

A. No, sir.

Q. By anyone?

A. No, sir.

Q. Well now, how did you find out about that?

A. I knew it ever since I have lived in Oregon.

Q. You knew of that provision.

A. Yes, sir.

Q. And it was generally known, wasn't it?

A. I think it is generally known. Any man that didn't know it, it is probably through his own ignorance. It was plain for anybody to know. It was a matter of record.

Q. Yes, a matter of public statute.

A. I think so, yes.

Whereupon witness testified, that he represented about 100 or more applicants, a majority of whom lived in Roseburg. He did not make out their papers for them, but a lawyer by the name of A. N. Orcutt, a partner of Judge Fullerton at one time, made them out. Orcutt is his attorney, but not in this matter. These 100 applicants employed Orcutt, who went down with witness to San Francisco and was present when witness

made the tender to Eberlein; Orcutt was present and saw that it was well done; witness took these 100 applications with him at two different times. These applications were printed blanks; and in the blank applications they applied for a particular quarter section and offered to pay $2.50 an acre, and represented that they desired the land for actual settlement; and they claimed the right under the Act of April 10, 1869. He could not say whether there was an affidavit to these various application blanks; it was a written form and made a matter of record when he returned to Douglas County. He did not commence any suit on these applications, and is not sure whether any of these people are interveners. He does not know who located these other quarter sections applied for by these 100 people, but he knows that Charles Thoms located a few of them. Thoms might have been a timberman at that time, but he is now in business in Coos County. He knows that twelve or fifteen of these people were not charged anything for locating them, but he does not know whether Thoms charged generally. He knows that they did not generally get from $75 to $150 a piece for each claim, these that he is speaking of. He thinks a majority of them paid $5. He does not know what kind of lands these men applied for, or anything about the character of these lands, except a few of them, three or four different ones that he knows of; Simon Caro, for instance, he knew what he applied for, because his claim was quite close to his own, and he had seen it himself. Caro was a merchant in Roseburg, and he has been there thirty or

forty years in business; he applied for a pretty well timbered quarter section. All this happened about four years ago, he thinks, but he could not be positive; it happened long before this suit was commenced; he thinks it would be two years before the suit was begun, which was September 4, 1908. He could not state positively if it was before or after April 30, 1908, but the records will show exactly when it was done, because the applications were made a matter of record when they returned from San Francisco. There was a good deal of agitation about that time, and he was one of those who first started it; and he certainly was active in starting it; he had feeling in the matter and wanted to see his neighbors get some of the land; wanted to see the settlers, or men coming into the country, get some of it if they could. He had no feeling against the railroad company, none whatever; but he wanted some of the land. The quarter section that he applied for is worth, in his judgment, today, five or six thousand dollars, and the principal value of it at present would be for the timber that is on it. He only knew a few of the other quarter sections applied for; they were similar to the one he made application for and about the same thing. He figured the quarter section he applied for was worth more than he was to pay for it and he thought it was worth five thousand dollars, and he offered to pay four hundred dollars for it.

Q. Now, these two settlers that you speak about going in on unsurveyed land that the railroad company wouldn't sell them, that is between Glide and Hoaglin?

A. Yes, sir; on the south side of the river.

Q. On what river?

A. The North Umpqua.

Whereupon witness testified, that this land, above referred to, was on the North Fork of the North Umpqua River, and was rolling land, pretty well covered with timber. It would be hard for him to say what these two quarter sections were worth, but he would say three or four thousand dollars. The man that lived there raised more or less garden stuff, and had some stock which roamed mostly on the hills adjoining him; he does not think that he had all the land fenced at the time; he had some of this quarter section fenced, but could not state as to how much; he knows that he had, because he was there and saw it; he had fifteen or twenty acres in cultivation on the hillside, on the slope of the hill. On one of these claims there was no creek at all; it slopes towards the North Umpqua River. The land did not lead down to the river, but led towards the river. One of these tracts was a quarter of a mile from the river; it might have run through one of them; but one of them the river did not touch, he thinks. They had access to the entire range back of them for their stock, and every person had the same. One of them had twelve or fifteen head of stock, but he does not know as to the other. He thinks that these places were from sixteen to twenty miles from Roseburg.

Q. Now, when you speak of this land being 75 to 80 per cent agricultural, you mean after the timber is taken off and the land is cleard?

A. I mean right today, it is 75 per cent of it that is good agricultural land.

Q. Well, you don't mean that it is now fit to be used for agricultural purposes until the timber is cut off?

A. Until it is cleared up, sure enough.

Q. Then, when you say agricultural to the extent of 75 to 80 per cent, you include in that these best timbered quarters?

A. I include everything that can be cultivated, that is good reasonable land for cultivation.

Q. After the timber is taken off.

A. No, after or before, just what will be good for agriculture when it is put in condition to be cultivated.

Q. You take 160 acres that is heavily timbered, how are you going to cultivate that now?

A. Cut the timber off it.

Q. That is what I asked you?

A. Yes, sir.

Q. You classify 160 acres of the best timber land in Douglas County as agricultural if it has good soil.

A. If it has good soil and can be cultivated.

Q. Yes, after the timber is off?

A. Certainly.

Whereupon witness testified, that he wrote to the company to try to buy some of these railroad lands ad-

joining him on Oak Creek, other than the formal application to which he has referred; it was the same character of land, rolling timber and brush. This was from five to seven years ago; it was some years before this agitation was started. He thinks it was before 1907, it seems to him it was about 1905, but he would not say positively. He applied for eighty acres, wrote to the general offices in San Francisco. Judge Fullerton gave him the address to write to and he wrote that he wanted to buy it and wanted to know if the land was for sale, and what they would take for it; and they replied that it was not on the market for sale. He does not know that it was Eberlien who replied to him, but thinks it was one of his clerks and he thinks the name was Henry Conlin, who was one of Eberlein's clerks. It was ordinary hill land, which could be cultivated if the timber and brush was off of it. Some of it was fair timber, but it did not have any saw timber. There was some oak and fir, young fir and a little laurel on it; and some creek bottom land, and a little ash swale on it. The first general inquiry for the purchase of timber lands in Douglas County, to his knowledge, he thinks was about nine years ago, as nearly as he can remember. The last three years it has not been very active, and before that, at times, it seemed to be very active. His recollection is that the inquiry for timber, some market for timber, developed somewhere about 1903, he might be mistaken a year or two in the date, it was between eight and ten years ago when the first timber rush began, he means when the demand began. There might have been

some inquiry for these timber lands before 1902 or 1903, but he had never taken any interest in these timber lands, and did not hear of any particular demand until somewheres about 1902 or 1903; there was quite a rush from four to seven years ago. To his knowledge the best price that any quarter section of timber land has sold for, either stumpage or by the quarter section, he thinks, has been about $5,000; this was situated on the west slope of the Coast Range in Coos County on the head of Coos River. A. O. Rhodes sold that quarter section.

Q. Do you know any of these large timber investors in Douglas County? I mean, know of their holdings?

A. I have been over what was claimed to me to be part of their holdings.

Q. What companies do you refer to?

A. Booth-Kelly Lumber Company.

Q. And have you been over any of the timber holdings of C. A. Smith Company?

A. I have been on part of theirs.

Q. And the Meenah-Oregon Land Company?

A. I have heard of them, but I don't know where their lands are.

Q. The Roach Timber Company?

A. I have been on some of that.

Q. Kendall Brothers?

A. Kendall Brothers, I have been on a good deal

of that.

Q. Pillsbury Lumber Company.

A. I know that.

Q. Lennon Land Company?

A. I don't know that.

Q. Bradford Timber Company?

A. I don't know that.

Q. Myrtle Lumber Company?

A. I know a little of theirs.

Q. Gardiner Mill Company.

A. I know part of theirs.

Q. Weyerhauser Land Company?

A. A little of that.

Q. A. H. Hinckson?

A. His is scattered all over. I know a little of that.

Q. Sparrow, Coach & Kroll?

A. I don't know that.

Q. Do you know any of the holdings of the Northern Pacific Railway Company, that have been scripped by that company in Douglas County?

A. No, sir; I don't.

Q. You have never been in the timber business yourself?

A. No, never been in the business.

Q. Never made any investments in timber excepting this quarter section of the homstead that you bought?

A. That is all. I did buy a piece, too, in Jackson County.

Whereupon witness testified, that the land he bought in Jackson County, three years ago, and still owns, he never saw and does not know where it is, that is, not what township and range, but he thinks it is in the northwestern part of Jackson County; he bought "unsight and unseen," as they used to say; he had a cruiser, who claimed to have seen it, a man whom he thought he could trust; he did not buy it on a cruise, and he did not get a cruise. A man had cruised it, that he knew, and he talked with him about it, and he told him that it was a good piece of land, that there was forty to sixty acres of it that would be good farm land, and it had some very good timber on it and that it would cruise about 3,000,000 feet, if he remembered right.

Q. What did you pay for it?

A. That is my business.

Q. Did you buy it three years ago.

A. Three years ago.

Q. Well, then, you decline to answer?

A. Yes, sir.

Q. Well, what is it worth?

A. It is worth $2,000.

Q. One hundred and sixty acres?

A. Yes, sir.

Whereupon witness testified, that this land last referred to is not railroad land and he does not know whether it is in the railroad limits or not. He believes it was not a homestead; he thinks it had been homesteaded and then commuted; that is the way he understood it. There were no improvements on it that he knew of; he never saw the land. He presumes, but did not know, that it had the usual cabin of a homestead settler. Whereupon on redirect examination witness testified:

Q. You know in a general way about homestead cabins, do you?

A. Yes, sir; in a general way I know.

Q. You know also, in a general way, about the way railroad companies try to get 2,300,000 acres of land that they are not entitled to?

Mr. Fenton: I object to that as incompetent, and I think improper on the part of Government counsel.

A. I believe that is their method.

Q. Do you know of any reason why, if a man has defrauded the Government of 160 acres of land by a homestead entry, that a railroad should take two million three hundred thousand acres that they are not entitled to?

Mr. Fenton: I protest against this inquiry on the part of Government counsel representing the Depart-

ment of Justice.

A. The Government never let 160 acres go, or no other number of acres, that they didn't get their money for, except they let it go to some railroad corporation.

Mr. Fenton: I move to strike out the answer of the witness as immaterial and irrelevant, and as not responsive to this inquiry at all.

Q. What have you to say as to these large holdings that have been called to your attention, of the C. A. Smith Company and other companies as to the character of the land? Is it of the same general character that you have described, or different, and if different, in what respect?

A. The same general character of land. A great portion of it is good agricultural land when cleaned up.

Q. One of the railroad land examiners and cruisers has testified here that in the whole of Douglas County there is not to exceed 600 acres of these unsold railroad lands that are agricultural in character and that can be cultivated. What have you to say as to the correctness of that testimony?

A. He is absolutely mistaken. If he has ever been over any portion of it to speak of, he knows that he is wrong.

Mr. Fenton: Defendants move to strike out the answer as argumentative, not testimony.

Q. Now, your attention has been directed to the increase in the demand for these lands for timber pur-

poses. I will ask you whether or not there has been, at any time within your recollection, an increase in the demand for lands for agricultural purposes and for home purposes, and if so, when?

A. In the last seven years, or say for the last ten—seven especially—there has been more demand for homes, for agricultural lands, than there has for any other character of lands. Land of all kinds has advanced in the last few years. I would say, from one to four hundred per cent—agricultural lands.

Q. Now, have markets improved for agricultural products in the mean time?

A. Yes, sir.

Q. What have you to say as to whether the development of that country has also been held back by lack of transportation facilities?

A. Very much so.

Q. Now, this homestead that you bought from the original homesteader, who lived upon it some seven years, as you testified, and which is situated about eighteen or twenty miles from Roseburg—about thirty miles, close to thirty.

Q. Thirty miles from Roseburg, do you know whether the intervening land between his homestead and the railroad was developed in the meantime or not?

A. No, sir.

Q. To what extent, if any, did that affect his op-

portunity to maintain a home there?

A. It affected him very materially. He was nearly thirty miles from railroad transportation, sixteen or eighteen miles from a school, for all he had no family; no wagon roads, and most impossible for a man without means to have made roads when he had to make them all across railroad quarters or lands and others.

Mr. Fenton: I thought that land was west of Roseburg?

A. East of Roseburg, in 27-1, section 2, right on the divide between the North Umpqua and what is called the East Umpqua, or the Middle Fork. I can put my finger right on it. (Witness points to place on map.)

Whereupon on recross examination witness testified, that the homestead he bought is in Section 2, Township 27 South, Range 1 West, and is in a Forest Reserve; it was unsurveyed when he took it, but it is now about three miles inside of the Forest Reserve, or something like that. He does not think that there is any railroad land adjoining it, that he knows of, and he thinks the nearest railroad section, according to the map, would be about five miles west. He does not know how long that Reserve has been there; he knows that that was one of the main drawbacks to his getting his title to it, the forest rangers opposed it and claimed that they wanted the land for a ranger's station and that part of it was timber land. Practically all of it is agricultural land, but it was the contention of the forest rangers that it was timber land; it was finally patented to the man from whom

he bought it. He did not buy it for the timber primarily, and he did not buy it for a home; he bought it for an investment. Practically all of it is good agricultural land. Part of it is already cleared of timber; and the part that has timber on it is good agricultural land after it is cleared. Whereupon on redirect examination witness testified, that there are no settlements around this land that he applied to purchase and no road into it; and he believes that he could sell it for more for the value of the timber to some of these big timber men than he could for a man to go on to make a home of, but the quarter section would make some man a good home that would go on there and clean it up. There is some good farm land on it. In his judgment, the value of that land for agricultural purposes, after the timber was removed, and assuming that the land in that vicinitly was also similarly settled up, would be eight or ten thousand dollars.

Whereupon CAL HILEMAN, called as a witness on behalf of complainant, and being duly sworn, testified, that he is thirty-six years old, was raised close to Knoxville, Tennessee, and his post office address at the present time is Wendling, Oregon; his present occupation is ranching on a small ranch. He has lived in Oregon about twenty-two or twenty-three years. He lived on the McKenzie a few years, was east of The Dalles a couple of years, and lived on the Mohawk River eight or nine or ten years. The Mohawk River is located near Mabel, east of Eugene, in Lane County, Oregon. He was raised on a good farm, and his father had a good

sized farm all his life. Farming has been his occupation up to the time he was married thirteen years ago; since that time he drove team four years for the Hyland Lumber Company, and T. R. Yeager, and the Sunset Lumber Company at Mabel. His experience has been such as to familiarize him with the farming industry of Western Oregon; he has worked quite a bit of land there. He has been in contact with the people engaged in farming, to a considerable extent. He is only familiar from memory, without referring to the map, with Section 33, Township 15 South, Range 1 East of these railroad lands involved in this suit. Referring to Defendants' Exhibit 259, he does not know much about the townships and ranges through that country, but has ridden over lots of that country, and is familiar with all the country through Marcola, on the Mohawk, in Township 16 South, Range 2 West. He lives on Section 33, Township 15 South, Range 1 West, and is acquainted with the lands about Mabel, in Township 15 South, Range 1 West, and a few miles north of Mabel. He is acquainted with the lands in the vicinity of Camp Creek some, and has ridden in there quite a bit. He rode that country from Marcola to Camp Creek, all through there —clear through to Walterville. He is acquainted very little south of Walterville. He has been over that country to Mabel and Wendling, Walterville, Mohawk and Camp Creek, shown on Defendants' Exhibit 259, and has traveled the wagon roads and has been in the hills through there, driving cattle, but did not know, of course, whether it was railroad land. He has traveled over them

a number of times, other than on the public highways. He had cattle in there, and he was looking after cattle, and gathering cattle in the fall, and all through the summer he made from two to three trips a month salting cattle. He would go north of Mabel about three or four miles, and would go through about three or four miles above Wendling. He never gathered cattle east of Wendling, that is, run cattle in there, but he has bought cattle east, clear through all over the valley, and is acquainted with these lands east of Mabel about seven or eight miles, and about three to five miles, something like that, above Wendling, and as far as Mabel, and about six or seven miles east of Wendling; west of Wendling he does not know how many miles, but a good ways. South of Camp Creek he has not traveled very much. He has a general knowledge of the entire country from Mabel, in Township 15 South, Range 1 West, to Township 17 South, Range 1 West, and gained that knowledge by traveling along the public highways and ranging cattle through that country. His duties with reference to the stock would carry him off the public highways, and over this land generally, and he is acquainted with the general character of that land, and with its agricultural and grazing possibilities, and with the growths that are on the land, such as timber, and is acquainted with the hills, and the general formation of the country. His father's farm, that he speaks of having been raised on, was at Mabel, in the same section that Mabel is in; he could not tell the description, or what section, township or range, except as they have referred

to Defendants' Exhibit 259. He looked at his deed and thought his land was in Section 33, Township 15 South, Range 1 East; that is his place, which is about a half mile east of Mabel; and his father's farm is contiguous to his lands, where his father has lived about twenty-three years, engaged in farming, and he farms it all the time, every year; and that has been his occupation since he has lived there; he has raised a family. From his acquaintance with this land in the area he has described, in his judgment, fifty to sixty per cent would be agricultural land, that is, land that could be tilled, and actually cultivated. The balance of the land would be useful for grazing. The grazing land in that vicinity is good; it raises good grass. He applied to the railroad company to purchase land from them; he thought it was about seven years ago, but it is in the neighborhood of about ten years ago. This land is located in Section 33, Township 15 South, Range 1 East, where they adjoin the land he now lives on; it was a good piece of land, which he wanted to farm. At that time he had not bought the place he now lives on, but he wanted this piece of railroad land to live on. The company offered to sell him the land, but he wanted to buy eighty acres, and they said the 320 acres was for sale, at $10.00 an acre and he wanted eighty acres of it. He did not make an application for 320 acres; they did not put any price on the eighty-acre tract he wanted, and so he just dropped it. The railroad lands generally in the vicinity of his place and that of his father's farm, are good. He has been farming railroad land. He bought 120 acres of

railroad land and has been farming it for five or six years; he bought that from some party other than the railroad company. He could not see any difference in that land from the other lands in that locality. There was no timber, to speak of, on the lands that he and his father have, very little. The growth of timber in that general vicinity is pretty good. He had to clear some of his land in order to farm it; he cut the underbrush, burned it, and the stumps still remain; he plowed around the stumps. It had been timbered land prior to the time he began to cultivate it. The Hyland Lumber Company bought it, and logged the timber off, and he bought the stump land. It belonged to an old gentleman by the name of Wortman, who died, and the timber had to be sold; the Hyland Lumber Company bought the timber, and he bought the land. The Hyland Lumber Company is composed of Hyland Brothers. The timber on this piece that he bought was good, but scattered and light. There had been trees growing on his father's place in patches, but there was about 100 acres of it that he did not think ever had any timber on it. There is timber growing on some of this land that he mentioned as between Mabel and Camp Creek. There are places in there similar to the places that he is farming and that his father is farming. Referring to his neighbors through the neighborhood there, there are Adams, Ernests, Hammonds, Riggs, Van Meter, Smith, Pickwitt, Arnold, Downings and a number of others, who live in that vicinity where he does, and are engaged in farming. That is a general farming community in

that locality. He knows by hearsay that the railroad company owns considerable land in that vicinity, of which he speaks, and he knows that he applied to purchase some of it. Whereupon on cross examination witness testified, that he could not say how long ago the land that his father owns had been deeded by the man, or the persons who preceded his father, or when the railroad company sold it, but he thinks it was a great many years ago. It is situated on the Mohawk River, and his father has cleared about 130 or 135 acres and owns about 270 acres. He could not state whether it was all railroad land. There is quite a mountain on his father's place, about thirty or thirty-five acres, maybe forty acres; most of the land in the bottom is cleared, he thinks there are eighteen acres up on the high bench, the rest of it is on the Mohawk River bottom. He does not know whether that place was bought from the railroad company twenty-five or thirty years ago. The improvements on it are fairly good; a barn and frame house with six or seven rooms, and has a fire place and chimney.

Q. And the garden there is old, so old that you have to manure it to keep it up?

A. Well, I suppose they do.

Q. About like one of these farms down in the Willamette Valley, as far as development and age is concerned? Is that right?

A. Yes, sir. Some of it has been farmed a good many years.

Q. Some of it has been farmed so long that it really don't raise wheat very well without it is summer-fallowed, or crops are rotated?

A. Well, he has some mighty fine wheat on it.

Q. I know, but he has to have oats one year and then has wheat the next year?

A. Well, I couldn't say for that, whether he changes it around that way or not.

Whereupon witness testified, that that is good farming land if he changes the crops around. He does not summer-fallow very much. He does not sheep it though when he does summer-fallow. He has no sheep, but has a few cattle. His father never had any cattle to speak of, just a few horses; besides cattle, he has four or six head of cattle. The place witness has in Section 33, Township 15 South, Range 1 East, is just above his father's, on the Mohawk River, which runs through his place, which is just a small stream. They used to log down that stream before the railroad was built, all the logs that they had that came from that watershed, came down the Mohawk River, and went to Coburg, which is somewhere in the neighborhood of twenty-two or twenty-three miles away from his place. He owns 112 acres there, and his land was railroad land. He bought from the Wortman heirs; Wortman died and the Wortman estate had to sell the timber; and the Hyland Lumber Company bought the timber and paid $400 for it and he paid $400 for the land. He couldn't say positively how long the Wortmans owned the land,

but several years though; it was not improved by them at all, but was wild land and he improved it and built a house on it. He has one acre cleared now of stumps on that land, and the stumps still remain there on the balance. After the Hyland Lumber Company logged it off, he slashed it and burned it over and sowed it to grass, and he pastures part of it, that is, he did that at first. He has about four acres only in cultivation, sown to crops, besides the grass, and he raises on this four acres oat-hay to feed his cows and horses in the winter time. He raises just a little corn down in his garden for family use, has a few head of hogs, for home use, he runs all the way from ten to fifty head of cattle and they run on the range all the way from two to seven miles from his place; he has a fine range there over seven or eight miles of country, or a good deal larger than that, and can pasture the railroad land if there is any railroad land in there, and in that way he gets some pasturage by going over a big area; they can go seven or eight miles without going through a fence, they can go a long ways, several hundred, he thinks; they can go to the Blue River and clear on through, if they have a mind to do it, which is over thirty miles. Stockmen sometimes drive in, but he does not think that they herd any during the summer months. They brand the stock with a registered brand and turn them loose, and then in the fall come and gather them up. They pasture these railroad lands just the same as the other lands.

Q. The railroad company pays the taxes on the lands, and the farmers in these boundaries get the bene-

fit of it—in pasturage, I mean?

A. Yes, sir; we turn our stock out and let them go.

Q. Well, now, if you didn't have any outside pasture, these people that drive their herds in there in the spring and go up and get them in the fall, they wouldn't be able to do that?

A. No, sir; they would not.

Q. If all the quarter sections were fenced in there, and everybody had to confine his stock to his own quarter section, the pasturage for each man would not be as great, would it?

A. Well, he would just have to keep what the place would furnish grass for.

Whereupon witness testified, that he would not want to keep very many cattle on 160 acres, but that amount of land would keep quite a few sheep for awhile. It would keep them longer than one season, and if one don't keep the sheep too long, it would keep from 100 to 150 head.

Q. Yes, you can keep 150 head a month, but you could not keep them all summer?

A. Oh, yes.

Whereupon witness testified, that they could not run sheep and cattle together very well, they won't run together very well, and won't pasture over the same grass very well. He has never tried running hogs and cattle together, and he does not know about that. He is a farmer and has a separate pasture for his hogs. He

knows that sheep won't follow cattle and cattle won't follow sheep. He could not tell how many bushels of grain he or his father had threshed on their places, witness has not threshed any. He could not tell how much his father threshed on his place this year; he had wheat and oats and he could not tell whether he hauled that to market, but he knows that he feeds some to his stock on his place and sells lots of it over the neighborhood, to fellows who live on places and do not raise any to feed their cattle in the winter time, like himself. Lots of these farmers up there come to his father's place for wheat and oats. These farmers raise lots of hay, but sell their hay and buy oats. They sell their hay to timber companies, the Booth-Kelly Lumber Company and the Coast Range Lumber Company. There are several parties on these timber lands that have all the way from fifteen to fifty acres on bottom lands and uphill land, too. Mr. Pickwitt has somewhere about twenty-five or thirty acres on that hill land. He thinks Pickwitt has owned his land twenty-three or twenty-four years. He could not tell if it was a donation claim, but he thinks he homesteaded part of it. He does not think it was railroad land. It is on the Mohawk River right there close to Mabel, just about a mile from the Mohawk River. He does not think that there is any branch that runs through this place. Mabel is a small place and there is nothing there but a saw mill; he could not say how many men work in that saw mill, but he thinks somewhere in the neighborhood of about 250 at the present time. The saw mill is owned by the Coast

Range Lumber Company. He does not know how many acres of timber they have there; the closest timber is within a mile of the mill. They get their logs to the mill by their own logging railroad. He does not think they ship any timber. He could not tell how much lumber they cut per day; he does not think they cut very much at the present time. Some of the men who work there live in their houses. They have only about, he thinks, somewhere in the neighborhood of twenty new houses, and there is quite a good many in tents, and other old houses, other shacks. The company maintains part of these houses, in which the men live, while they work, and the rest of the men live in tents and old houses. It is really a logging town; there is a store and post office there, besides the mill. He could not tell when the saw mill was established; there has been a mill there for years. It is a logging country. There is timber back aways, lots of it.

Q. This land that you speak of as having good soil, isn't it true that where there is heavy timber on this land, as a general thing, the soil is better than where there is no timber?

A. Well, that may be true, or most of it is.

Whereupon witness testified, that he thinks the market price of a good quarter section of timber would be from three to five thousand dollars, but he could not tell the stumpage value of timber in that vicinity, and does not know of any sold at this time; he has heard of it being sold, lots of it, but they give so much for the bulk

of it. He thinks that Pickwitt's place was a homestead.

Q. Did you see any homestead cabins up there, where they proved up and sold out—got their titles and sold out to timber people?

A. Yes, sir.

Q. What became of their cabins?

A. They burned down.

Q. Where the timber was, if the cabin was in the timber, it didn't burn that, did it?

A. Well, part of those cabins there was no timber within—oh, there was a lot of them was three or four-acre tracts; there was an opening where they had built their cabins.

Q. They had cleared out three or four acres, such a matter?

A. No, there was no timber there—never was.

Q. They built their cabins in this opening?

A. Yes.

Q. And the rest of it was timber.

A. Yes, sir.

Q. And after they proved up, they sold the land to timber companies?

A. Yes, sir; Booth-Kelly Lumber Company.

Q. Booth-Kelly Lumber Company bought a good deal of that?

A. I think so.

Q. And they are logging it off?

A. Well, they have logged part of it. Some of it they have not.

Q. Well, then, this land up there that is worth $3,000 to $5,000 a quarter is chiefly valuable at the present time for the timber that is on it, isn't it—at this time?

Mr. Rabb: Do you understand the question?

A. No, I didn't.

(Question read.)

A. With the timber on it, it is, yes, sir.

Q. That is the principal object that makes it sell, is the good timber on it?

Whereupon witness testified that he never made an offer on any of this railroad land, or any application to purchase any of it, other than this eighty acres that he has spoken of.

Q. How often did you go out in the summer time to salt your cattle in these woods, in the mountains?

A. Well, from two to three times a month, and sometimes oftener when I wasn't busy.

Whereupon witness testified, that the way he recognizes his cattle is that they are branded with a registered brand; other people go out and salt their cattle, too, in the summer time. They generally turn the cattle out on the range sometime in March, or April, and gather them, sometimes not until November, and sometimes

not until December. They let the calves run with the cattle out in the woods until fall, and brand the calves the next spring and turn them out. Sometimes cattle disappear, but he does not know what becomes of them, that is about the only risk that they run. They get free pasturage during the summer time. Whereupon on redirect examination, witness testified, that he raised on his place besides hay and oats, cabbage, potatoes, beets, rutabagas, parsnips, carrots, corn, tomatoes, cucumbers, peaches and apples, raised practically all kinds of fruits and vegetables. He keeps a few hogs and feeds them on his place. He never measured the acres he had planted to oats and hay exactly, but he thinks there are only about three or four acres of it. The land down in that country is about the same. It is situated about the same as his own place. It is a broken country. There would be patches maybe of four or five acres that is nice level garden land, and that condition is true in reference to where his father's farm is located.

Q. Now, Mr. Hileman, what is your opinion as to whether a man could go onto 160 acres, and settle with his family on 160 acres of land, generally in that vicinity, and make a living?

A. He can go on there with 160 acres, and he can make him a living there.

Q. Does that apply to all of this land that you have testified to, between Mabel and Camp Creek, that you have been over?

A. Yes, sir. I don't think there is a quarter section

in there but what a man can make a living on.

Whereupon on recross examination, witness testified:

Q. He could make a living just in the same way that you have made a living, wouldn't he, Mr. Hileman?

A. Well, a man can make a living on that piece of ground without working out.

Q. I don't mean working out, but by having stock and allowing it to run on the range in the summer time, and in the winter, why, he would have feed enough upon these open pieces that he could clear to take care of his stock through the winter?

A. Yes, sir.

Q. And that is the way he would make his living until he cleared an acre more?

A. Yes, sir.

Q. Now, did you ever clear any of this heavy timber land?

A. Yes, sir; I have cleared it.

Q. With big fir saw timber?

A. Yes, sir.

Q. How did you do that?

A. Well, I have helped dynamite them.

Q. And how big are these stumps that you have to dynamite?

A. Some of them was awful large—five or six foot

through.

Q. How big are the roots?

A. Oh, they are very large.

Q. And how much of that tree, you might say, is underground—take one of those big trees?

A. I couldn't tell you, but there is a lot of them underground.

Q. Pretty near as much wood under ground as there is above ground?

A. Oh, no; not that bad. But there is some.

Q. A very large amount? Those roots go down into the ground how deep?

A. I couldn't say; but some of them, I think I would be safe in saying, five to six feet deep.

Q. A fir tree doesn't have a tap-root, as a rule, does it?

A. Some of them has; a few of them go down.

Q. But the big roots that support a big fir tree are roots that branch out?

A. Yes, a ways; and then go down.

Q. How far from the tree do those roots run sometimes?

A. A good long ways.

Q. Probably thirty feet, don't they?

A. Yes; I have taken them out further away than

that.

Q. They are as big as your body, some of those roots are?

A. Not that far away; about like my arm.

Q. I mean, close to the tree they are as big as your body sometimes.

A. I don't think so out that far.

Q. Well, how far?

A. At from six to eight or ten feet.

Q. And under the ground?

A. Yes, sir.

Q. Sometimes on top of the ground as they leave the tree?

A. Occasionally you will find them on top of the ground.

Q. Now, after you have dynamited a stump, what is then left to do?

A. Is to fill up the hole.

Q. Well, how big a hole does it make?

A. It makes a pretty big hole in the ground sometimes.

Q. Pretty near put a house in, couldn't you?

A. Well, a small house, you might.

Q. What do you do after you fill up the hole?

A. It is ready for farming.

Q. What do you do with these roots when you get them out?

A. Pile them and burn them.

Q. Do you use donkey engines to pull these things together in a large pile there, and have a big fire in the winter?

A. No, sir.

Q. You have seen them do that down on the Nehalem, haven't you?

A. I have seen them do that down there on the mill.

Q. Haven't you seen them do that down on the Necanicum and all this heavy timbered coast?

A. No, sir.

Q. Take a donkey engine and pull them together, and get a pile of roots sometimes higher than this house and bigger than this building?

A. I use a timber block.

Q. Block and tackle?

A. Yes, sir.

Q. And a team?

A. Yes, sir.

Q. What do you have to do that for?

A. Put two or three of them together so I could burn them up.

Q. Have them into a pile?

A. Yes, sir.

Q. Get a pile as big as this courthouse?

A. Oh, no. Get three or four or five roots together and burn them up.

Q. Well, suppose you went in there to clear the land, with the timber on it, the first thing you would do would be to sell the timber, wouldn't it?

A. Well, I have cleared it on the McKenzie that we would fell the timber and burn it up, big logs, heaps of it.

Q. You wouldn't do that if the timber was worth a dollar and a quarter or fifty cents stumpage even?

A. I wouldn't nowadays.

Q. The first thing to do with this quarter section of fine agricultural land that is heavily timbered would be to sell the timber?

A. I would clear enough to make my garden.

Q. You could do that with a space as big as this room, couldn't you?

A. No, not that small. I would want an acre or an acre and a half.

Q. That wouldn't take long to get an acre or an acre and a half? You could grub that out and clear that out in one winter, couldn't you?

A. I could, all but the big stumps.

Q. After you had got the place for your house picked out, and got your place dug out for your garden, and then the forest was on the rest of the land, the

first thing that you would think about would be to sell that timber to somebody that would pay the best price for it, wouldn't it?

A. Yes, sir; and get it off as quick as possible.

Q. And then, after you had sold the timber you would have left the stumps cut up eight or ten feet above the ground by the timber people?

A. Yes, sir.

Q. Sometimes twelve feet above the ground?

A. Yes, sir.

Q. So as to avoid a heavy butt?

A. Yes, sir.

Q. They saw those off, don't they, those timber men?

A. Yes, sir.

Q. Go and get a ladder and put a man, and another one up on top of the ladder ten feet high, or a platform, and saw it off and let it fall?

A. Put in a spring board.

Q. A man takes care of himself and gets out of the way the best he can?

A. Yes, sir.

Q. And then you are left with the stump there, that is ten or twelve feet high sometimes?

A. Yes, sir.

Q. And you are left with all the small timber that

is not saw timber?

A. Yes, sir.

Q. And the brush?

A. Yes, sir.

Q. And there is brush and debris and stuff, and what do you do with that—burn it?

A. I slash it down, finish slashing, and burn it up.

Q. After you have burned it, then what do you do?

A. Well, I go to work, if I ain't going to plow it right away, and seed it.

Q. Seed it down to grass and get a little pasturage that way?

A. Yes, sir.

Q. You run it that way for awhile?

A. Yes, sir; until it runs out, and then I plow it.

Q. You cannot plow it very well with these big stumps in there?

A. I have plowed acres and acres of it.

Q. Land that has stumps?

A. Yes, sir.

Q. That is a good deal like plowing with what we call a peavine mower around these oak hills in Tennessee, isn't it?

A. Yes, something similar, the same thing.

Q. I have been there—I know.

A. I can show you hundreds of acres farmed, though, with all the big stumps in.

Q. You couldn't run the machine over it, could you, to cut it?

A. Cut it with a mower, drive around the stumps the same as you go around with the plow.

Q. Well now, that is about the way it is cleared, isn't it?

A. Yes, sir, that is the way the most of it is cleared up in the country—all of it practically.

Q. And the result is they haven't got very much cleared?

A. They farm it with the stumps in all the time.

Q. It has been about fifty or sixty years this country has been settled, hasn't it?

A. Yes, sir, somewheres in that neighborhood. Oh, it hasn't been that long.

Q. The first settlement in the Willamette Valley, four miles north of Salem, was in 1830, wasn't it?

A. I couldn't tell you that, sir.

Q. Eighty-two years ago. Well, there is wheat land in the Willamette Valley that has been farmed over sixty years, isn't there?

A. I don't think so.

Whereupon on redirect examination witness testi-

fied:

Q. These lands that you have spoken of as having been cultivated around the stumps, where was that land located, in the vicinity of these lands that you have described as being acquainted with?

A. Yes, my own place and Pickwitt's, and all of those places.

Whereupon J. P. CURRIN, called as a witness on behalf of complainant, being duly sworn, testified that he is sixty-seven years old; resides at Cottage Grove, Lane County, Oregon, and has resided there most of the time for forty-five years. He is a pharmacist and does surveying and teaching also. He was born in Virginia; has also lived in Creswell six years, which is nine miles north of Cottage Grove and is in the same locality. He has done county surveying, also for the Oregon and California Railroad Company, and government surveying. He assisted in the survey connecting the land claims to the line of the Oregon and California Railroad, the deeds for the right of way, in 1871, that is, where the lines intersected, crossed the land claims, he would take the distance back to the established point, referring to donation claims, homesteads and the government section lands; that is, checking up right of way matters, in connection with the right of way the company desired, with the public surveys as evidenced by donation land claims, homesteads, and other lands. This was prior to the time the track had been laid and the road constructed. He worked for the Company across Lane County perhaps a week

or ten days, from one county line north to the south line, excepting within the corporate limits of Eugene City. He has done government surveying—surveyed in six different counties—Benton, Lane, Crook, Grant, Umatilla and Union, and had a number of government surveying contracts. He was county surveyor less than a year—the latter part of 1870 and part of 1871. He is acquainted with the agricultural conditions existing in Lane County, and referring to Defendants' Exhibit 259, showing the lands involved in this suit in green markings, he is more particularly acquainted with the southern part of Lane County, including some of township 19. He is very little acquainted with the lands in Lane County north of township 19. He surveyed in the north part of the county on the donation claims or deeded lands more particularly, and surveyed 20 south 1 west, 22 south 2 west, and 23 south 3 west, and he thinks he has been over this country generally so as to acquaint him with the general character of the land. In his opinion thirty to forty per cent of that land is agricultural, and the remainder could be used for grazing or orchards. Quite a large per cent of it that is too rough to plow or to put into a field, might be planted in orchards. The rough land could go back to the forest. Some of the rough land is steep and rocky, and it would not be practicable for any other purpose. He has not surveyed on the railroad lands in the western part of Lane County, but he has been over that country, it is smooth, mountainous country. Speaking of what is along the road where he has traveled, he would think that land would average per-

haps a little greater per cent agricultural than in the eastern part, that is, a greater per cent of it would be agricultural land. When he surveyed these townships he found settlers in there. These townships were partly-surveyed, the heads of the valley, the three townships were surveyed and settlers were there, and settlers are in these townships now.

Q. Now, in 20 south, 1 west, Mr. Currin, would this land, in your opinion, if divided into 160-acre tracts, and not by quarter sections but by 40-acre subdivisions, would that support a family if a man should settle on that land?

A. Did you say 40 acres or 160?

Q. 160 in forty-acre tracts, but not by quarter section.

A. In a large majority of them they could, yes.

Q. Is that same condition true of the lands that you have testified concerning in Lane County?

A. Yes, it is. Perhaps a little more favorable in that township than in some of the others.

Q. Now, Mr. Currin, are all the railroad lands covered with timber? Are they timbered lands, all of them?

A. If you mean saw timber, I say no.

Whereupon witness testified that he applied to purchase lands from the railroad company in his wife's name about five years ago, located in section 17, township 20, south, range 3 west. His wife owns land in section 17, and one forty in 18. That land is agricultural and fruit

land, and is used for raising fruit and other agricultural purposes, and his wife has owned it five years. The character of the railroad land which his wife applied to purchase is hill and bench land. His wife's farm is the west half of the southwest quarter, and this he applied for is the east half of the southwest quarter and is contiguous to the farm of his wife. The land his wife applied to buy has some plowed land on it today, and there are about fifteen acres which could be plowed and put in. It was a timbered tract, but is cleared up. The railroad company contracted that land to a party and he cleared it off, took the timber off, and then changed his contract to another piece west of that, so it left that one clear and comparatively ready to plow. That was the land his wife applied to buy. The prior contract covered this land and it was thrown up and the party contracted for the forty west of the tract owned by his wife. He knows of one tract of one thousand acres of logged off land in Lane Conuty, which is situated from two to six miles southwest of Cottage Grove, which was purchased by M. H. Anderson for the purpose of using the land for agricultural purposes. It was his understanding that he paid five dollars an acre. Timber had been all over it—it was merchantable saw timber, but not very thick, only in patches some good timber. The timber in Lane County that is found high on the mountains, averages very well. Get higher on the mountain, it would be heavier, and it varies over the county according to locality. The altitude has considerable to do with it. There is quite a good deal of fruit raised in Lane County. It

is not a new industry in that section of the country; there are old orchards; there are a great many new orchards coming in, but there are more old. Commercially speaking, it is a new industry. He is acquainted with the fruit raising business in a small way. He thinks the mountain or rolling land is better to raise fruit on; it does better at higher altitude.

Q. What is your opinion, Mr. Currin, as to the effect upon the settlement of this country by the sale of the lands of the O. & C. Company to large timber holders and the withdrawal of the lands from the market?

A. I think it will hold the country back from settlement a great deal.

Whereupon, on cross examination, witness testified that he had lived in Lane County about forty-three years, residing all that time at Cottage Grove, excepting about six years when he was at Creswell, which is nine miles north of Cottage Grove. Cottage Grove is on the line of the Oregon and California Railroad, and is one of the old settled portions of Lane County. Quite a portion of the land around Cottage Grove and Creswell is in the valley. Quite a portion of it but not most of it, was taken up under the donation law. The valley at Cottage Grove is about a mile wide. The Willamette Valley narrows below there. There are some places below there that is narrower than it is at Cottage Grove. It opens out at that point, and then comes in above. The level land in the valley at Creswell is about a mile or more wide, but take some of the rolling land, take up the

swale there, it would be several miles. Including the foothills, the valley, he would think, at Creswell is about three miles wide, and at Cottage Grove about two miles wide. He was employed about ten days in connection with the right of way matters, checking up the corners or ties of the right of way deeds on lands deeded as right of way of the Oregon and California Railroad Company, in 1871, when they were locating the line through Lane County. He was working under a right of way man, and with that exception, he has never had any employment with the Southern Pacific Company or the Oregon and California Railroad Company. He includes in his classification of thirty to forty per cent of the lands which he had surveyed through or been over in Lane County as agricultural lands, lands that may be covered with some kind of timber, but which when cleared the soil would be good and sufficiently level to put to some agricultural use.

Q. And the balance of the land that you say might be used for grazing purposes is too rough to use for ordinary agricultural purpose?

A. Particularly steep.

Q. Yes. So that in making this classification of agricultural, you take into account the topography of the country as well as the character of the soil?

A. Yes.

Q. And really those are the two controlling elements that you use in classifying agricultural lands?

A. I do, yes, sir.

Q. Now, much of this land that you have thus classed as agricultural is covered with the heaviest timber in Lane County, isn't it?

A. Quite a good deal of it, yes, sir.

Q. That is to say, the better class of timber and the heavier stand grows, especially fir timber, where there is pretty fair soil? Isn't that true?

A. I think so, yes.

Whereupon witness testified that he thinks the saw mill men prefer timber which is from three to four or five feet thick at the butt. They will cut it perhaps two feet to four feet, and the height of the tree will run up two hundred feet in the larger timber. The largest tree that he has ever seen is one standing on the side of the road as one goes into Bohemia, which is said to be ten feet at the butt. He has observed that several times. He is not capable of answering what per cent of the total forests of Lane County would range from say six to ten feet at the butt. He is no cruiser, has never had any experience in cruising, and is not a saw mill man. The eighty acres of land his wife applied to purchase is railroad land in section 17, township 20 south, range 3 west, and that was about five years ago. It was land adjoining that owned by himself and wife about one mile north and two miles west of Cottage Grove. Hanson Brothers were the first purchasers of the tract which his wife applied to purchase. Hanson Brothers had a contract,

which he supposes was obtained from twelve to fifteen years ago, and they were three or four years in paying up. Hanson Brothers first had a contract on the eighty east of his wife, and after Hanson Brothers took the good timber off—they cut timber for railroad wood and when they got that off, they threw that up and took the west half of it, which was heavily timbered, saw timber. That is, these people bought the land under a contract and cut the timber off while holding it under contract for railroad wood and sold the wood to the railroad company, and then they made a change with the company and took the one west. They simply let the land go back to the railroad. They had no deed, only a contract, and that is the tract that his wife applied to purchase. That tract had been cut over for the cordwood that was on it; that is, about twenty-five acres had been cut over for cordwood purposes. The balance of the land gets up on the summit where it is brush and some oak timber, very little fir. It was chiefly valuable for raising grain and fruit in particular, when his wife applied for it. At that time the timber was already off, and it was very little work to take the stumps out. That had been railroad land about twelve or fifteen years before it was purchased by Hanson Brothers, and had come back to the railroad company in the way of which he speaks. With that exception, neither he nor his wife ever applied to purchase any railroad land, or made any application to file on any of these timber lands. He knows that a great many did, particularly around Cottage Grove, Roseburg and Eugene. Timber first became a matter of inquiry

as an investment and as a purchase, somewhere in the 90s in Lane County. There was a widespread depression in 1893 in business and in financial circles in Oregon and in the United States, and it was shortly after that that the timber inquiry began to develop. This demand or inquiry for timber investment was wholly among speculators. The company that got the information from him was in the East. He thinks the market began to become active in Lane County about 1900—it might have been before that. He thinks the timber was pretty much all taken about that time in his country. The timber became a matter of inquiry that was active and acute, in his judgment, and was at the highest tide of timber activity about 1900. The timber land was bought up for speculation and for investment by these timber people.

Q. Have you ever stopped to make an investigation to ascertain about how many acres of timber lands in Lane County that had been taken up under the timber and stone act, and under homesteads, and under preemptions, and under scrip, and in various ways, including the lands which have been purchased from the railroad company by timber investors and millmen, are now owned by mill men and timber men outside of the railroad company?

A. I could not tell what proportion. I think a large majority of our good timber is owned by those companies.

Q. That class of people.

A. Yes.

Whereupon witness testified that Booth-Kelly Lumber Company, Row River Lumber Company, Star Company, Brown Lumber Company, Chambers Company, Spriggs or Briggs Company and several others are manufacturing their timber and shipping it and using it and making business in Lane County. There are several other mills there. There are seven mills on that twenty mile road running to Bohemia, but some of them are not running. That railroad is the Oregon & Southeastern and runs from Cottage Grove into Bohemia, and has on it seven or eight mills which manufacture lumber to be shipped out of the state if they can get a market for it. He thinks Booth-Kelly Lumber Company has a large outside trade, and that these mills on the line leading up to Bohemia ship outside when they can get orders. He only knows by hearsay that the Hyland Lumber Company has large mills up in that country. The present way of getting rid of the timber on these lands is to get the timber off, manufacture and sell it in the markets of the world or use it for improvements. Before the land could be used for agricultural or horticultural or other purposes, the timber should be removed, so that there would be a period of time when the development of the country in the timbered countries is to take the timber off, manufacture and ship it and get the best price for it possible.

Q. Well now then, suppose that the company in this case, Mr. Currin, had sold these 160 acres to these

so-called actual settlers within the last seven or eight years, and had allowed them to pick the best quarter sections of timber in Lane County still unsold by the company, and had sold it to them for $2.50 an acre, or $400 for a quarter section, and had given them a good title, wouldn't they have had to sell the timber first to get the country developed.

A. I know of persons that have cut it down and burned it up.

Q. I know, but that would be destructive, wouldn't it?

A. It would.

Q. Wouldn't they first utilize the land by selling the timber to somebody?

A. It would be the better way, I would think, yes, sir.

Q. That would be the better way.

A. Yes.

Q. Well now then, wouldn't they be able, if they wanted to sell, to get a better price from timber investors and practical sawmill men selling the land outright. In this record in some cases the testimony shows as high as $5000 a quarter. Wouldn't that be the way most of these timber quarters would go—just as the homestead timber quarters and the cash entry timber quarters, and the entries taken under the timber and stone act have gone? Wouldn't they go to the timber people?

A. As a matter of finance, I think they would.

Q. Yes, that is the history of the way these things would go?

A. Yes, sir.

Q. And that is the way they have gone?

A. Yes, sir.

Q. As far as they have got title in the main?

A. Yes, sir.

Q. So that if we should sell every quarter section of good timber in Lane County to these so-called actual settlers, and give them a good title, the title to that land would pass in a year or two to the timber investors, wouldn't it?

A. In a majority of cases I think it would.

Q. And they would use it for speculation, or hold it for investment, or manufacture the timber into lumber to get their money out?

A. Yes, sir.

Q. Now, you say you know of a thousand acres of logged off land which was sold at five dollars per acre to a Mr. Anderson. Where was that land—this side of Comstock?

A. It lays east from Comstock. From the summit of the Calapooia mountains down to the Coast Fork.

Q. Yes, it was land that the timber was taken off by the Comstock mills and other sawmill men?

A. Yes, it was taken off by a mill at Latham. It

comes east.

Q. Taken off by a mill at Latham?

A. Yes.

Q. Do you know what these timber people got off these lands in the way of timber, and how long they were engaged in cutting the timber off and manufacturing it?

A. The Chambers Company are just finishing it up.

Q. How long were they engaged in that work of sawing it into lumber?

A. Perhaps two or three years. Not any longer than that.

Q. From whom did they buy these timber lands?

A. Well, from settlers principally.

Q. That is, these people that went in there and settled on these so-called timber lands, either by homestead or pre-emption or in any other way, sold it to a sawmill, got their money, and the sawmill company then cut the timber off, and they finally sold the logged off land to Mr. Anderson. That is the history of it, isn't it?

A. That is mainly the history of it, yes, sir.

Q. Now, what is Mr. Anderson doing with it?

A. It is an investment to sell out in smaller tracts for agriculture.

Q. He bought it on speculation?

A. I think so.

Q. Where does he live?

A. Cottage Grove.

Q. He is a real estate man, isn't he?

A. No, he is a timber man.

Q. Well, he is a man that bought a thousand acres, as a capitalist, at five dollars an acre, with the idea that he would subdivide it, and sell it to poor men who would go on there and settle? Is that the idea?

A. Men of limited capital, yes, sir.

Q. That is what I mean? Well, has he sold any of it yet?

A. Not that I know of.

Q. What kind of stumps are on this land?

A. Well, the timber is rather a poor quality, only some thick patches of it.

Q. Not as heavy as generally speaking?

A. Easily cleared. Some of it is already clear.

Whereupon witness testified that the elevation at that point runs up from the river to perhaps five hundred feet. He has an orchard up about five hundred feet that is immune from these frosts in the early spring and fall in Lane County. When one gets up 400 or 500 feet they are above the frost line. One can get into the frost line again getting still higher; they get into the fruit line when they get up about 500 feet. There is an intermediate belt where one gets above the frost line that is lower, and he thinks one will get to a place where they

are in the frost line above, but they have no land in that part of the county that would come under that class. He has never noticed any orchards or things of that kind, where the elevation was 1500 feet high. There is perhaps one exception to that in 20 south, 2 west, where there is on orchard, he thinks, in the neighborhood of 1500 feet, which is now twenty years old, on a donation claim; he thinks, in section 18. A good many of the settlers in some of these townships through which he has surveyed, had gone on to these unsurveyed lands and taken claims and were unable to obtain title, and therefore petitioned the Government to survey it, so they could perfect titles.

Q. And some of those are still living there?

A. Yes, sir.

Q. They have not all sold to timber people?

A. No, sir.

Q. These that are living there, most of them, are on the streams at the headwaters?

A. On it or near to it.

Q. How?

A. At a slight elevation, some of them, but near to the streams.

Q. They are not very numerous, though?

A. No.

Q. Now, you say that a large majority of the quarter sections, in forties, not in quarter sections but in forties, running along there in a T-shape, or so that the

forties abut each other, in the particular sections of the country that you have visited, would support a family. Now, you mean by that, after the timber was taken off that the man could make a living on the place?

A. Yes, sir, timber and brush; brush in particular.

Q. Well, if he had to confine his pasturage of his stock on a quarter section of this land that was timbered land, make a living that way, he would have a pretty hard time, wouldn't he?

A. On some of them he would, but on I think the majority of them he would not.

Q. He would have to sell the timber to get something out of it as he went along?

A. According to his means, of course.

Q. Do you have any idea about how many people in your neighborhood made application under this $2.50 an acre proposition to get some of these good quarter sections of railroad land that has timber on it—in your county or in your neighborhood?

A. I do not. I don't think there are but very few.

Whereupon witness testified that most of the railroad timbered lands were gone. Booth-Kelly Lumber Company bought up the biggest portion of them; also the Weyerhauser Company. Very few people around Cottage Grove, that he knows of applied for any of these railroad timbered lands. He did not do so, but was advised to do so. There were lots of fellows running around through Western Oregon about the time this suit was

commenced and before, in 1907 and 1908, trying to get contracts to locate people on these lands and to get one hundred dollars or more out of everybody to do it, and they induced a few there in their neighborhood, not many, to do that. These brokers were telling these people how much timber they could get in that way, he thinks that is correct. He went to school at Corvallis from 1868 to the summer of 1870, and graduated in the first class at the old college at Corvallis in June, 1870, which was the old Southern Methodist College preceding the Oregon Agricultural College.

Whereupon, on redirect examination, witness testified that the money that a man could get for the sale of this timber would materially assist in clearing up his land and putting it in a condition to be cultivated, if he should settle upon one of these claims which has timber on it. There are three eighties of railroad land in section 17, including the one adjoining his place, that would make very good homes for three families.

Q. I understood you to testify on direct examination that the majority of the quarter sections in the area that you were acquainted with would furnish support to a family—would be suitable for settlement purposes, in other words?

A. For some families it would, yes, sir.

Q. What do you mean by that, Mr. Currin? Please explain.

A. Well, some families can live on half what others can. People from Europe can live on one of our rough-

est quarter sections. It would require better land for an ordinary American family to live on.

Q. You mean that people in poor circumstances could make settlements on there and gradually develop the land?

A. I do; yes, sir.

Whereupon witness testified that the demand for agricultural lands has increased during the last ten or fifteen years, and the public lands have been almost entirely taken up in Southern Lane County, and there is no land there in Lane County that would be good farm land without clearing, that has not been taken.

Q. To your knowledge, have any people settled in this timbered area prior to the time when timber was valuable, and have cleared the land off, burning what would be now termed merchantable timber?

A. Yes, sir; there is a great many, quite a good many.

Q. Are those lands still used for agricultural purposes?

A. They are, yes.

Q. Occupied as homes?

A. Yes, sir.

Q. Now, Mr. Currin, if a man wanted a tract of this land for a home as a farmer, and wanted to engage in the farming business, what, if anything, would prevent him from selling the timber and retaining the title

to the land?

A. I do not understand your question exactly. Do you mean what legal reason would be in the way? Until a man has perfected his homestead he cannot sell it.

Q. I am not speaking of a homestead. I am speaking, if a man would buy a 160-acre tract of this land that had timber on it, merchantable timber, at $2.50 an acre, if he desired to engage in the farming business, I am asking you if he could not sell his timber and keep his title to the land, using the money that he would obtain from his timber to assist in clearing up the land.

A. Yes. There would be nothing in the way at all, that I can see.

Q. As a matter of fact, Mr. Currine, isn't it true that, as an agricultural proposition, this timbered area is a better proposition today than it was when these settlers first came in there and burned the timber?

A. It is; yes, sir.

Q. They now can sell the timber and use the money in assisting in clearing the land.

A. The timber is an asset now while it was in their way before, and it was an expense to them.

Q. How about the increase in the value and price of farming products, including stock, cattle, sheep and goats?

A. The market is better now, better prices than there used to be.

Whereupon, on recross examination, witness testified that the cost of living has increased, and he thinks that it is true that the great complaint of the agricultural world is that the cost of living has increased faster than the cost of the farm products, and he thinks that is a fact.

Q. Now then, you speak about these settlements on some of these timber lands with which you are acquainted that were made a good many years ago, before these people could sell their timber, and that they are still there. Most of these settlements were on the streams and foothills in Lane County, that you refer to, were they not?

A. I refer more particularly to those up on the side of the mountain, pretty high up, but on a smooth mountain side, where there are swamps and flats. Most all of it was susceptible to clearing and cultivation.

Q. Those people went in there, and had 25 or 30 miles of mountain range for whatever stock they might have?

A. They had outside range, that is correct; yes, sir.

Q. And the only available means of living and getting an income was from their stock that was thus ranged over the public lands and over the railroad lands, for miles and miles?

A. These I have reference to are farmers. They cultivate quite a good deal of land, and have their fruits

in particular, and raise their own hay, vegetables, etc.

Q. I understand, but they do not market their products? They feed them to their stock in winter, and feed their potatoes and garden stuff to their families, and then they make their money, if they do make any, from the stock business? That is the way they did it for many years?

A. A good many of them make their living more by selling vegetables and fruit that they raise on the ground.

Whereupon witness testified that there is a good wagon road into these places, and they come into town with their vegetables and fruit, haul them into town and sell to the people in Cottage Grove. Quite a good many people make their living that way. Cottage Grove is a place of about twenty-five hundred people, besides there are a great many mill companies there and they would sell vegetables to them; they would sell wood, a good deal of that, and ties. There is none of this stuff that they would haul over ten or fifteen miles; they are close in to the railroad, and these are the settlements—the mountain settlers—to which he refers.

Whereupon on redirect examination witness testified that S. C. Bruce, about June 1, 1912, representing the Railroad Company, requested him to lease this eighty acres of land that he tried to buy.

Whereupon W. C. TIPTON, called as a witness on behalf of complainant, and being duly sworn, testified, that he is sixty years old and resides at Roseburg, was

born in Missouri, came to Oregon in 1854 and has lived in Oregon ever since, about 18 miles east of Roseburg in Douglas County. He has been in the farming and stock business ever since he has been in Oregon. They located 18 miles east of Roseburg in 1855, and he has lived there ever since until within the last ten years, during which time he has lived in Roseburg. Referring to Defendants' Exhibit 259, he has been over the lands shown, involved in this suit, marked in green, from Myrtle Creek to Calapooia Creek in Townships 25 to 28, inclusive, clear through from near the summit of the mountains — all through these mountains there, and is acquainted generally with the railroad lands shown in that area, and became acquainted with them by riding over them after stock, buying and driving stock; that is, the country up and about Myrtle Creek is where he was buying stock. He is acquainted with the agricultural business, and the possibilities of agriculture in Douglas County and that vicinity. In passing through, and the like of that, he could not tell what was railroad land, what were odd sections and what were even sections, a man would just consider it as a whole. There is not one of these 160-acre tracts—not necessarily legal quarter sections, but also in tracts of "T" or "L" shape — but what a person and a family could make a living on them; of course, they would have to clear them up, a good many of them, but there are quite a number of quarter sections that have already open land enough that a person could make a living on, that is a family. He would say from sixty-five to seventy-

five per cent of these quarter sections would be suitable for a man to go there to engage in the farming business. There are settlers living in that country, both on the even and odd numbered sections, which are of the same general character. He could not tell how long these people had been living in that community; they have been living there a long time, some of them have, and some of them not so long. They have gone on to that land and cleared it up, some of them have, and made homes there. Lands that are not susceptible to tillage or cultivation, could be put to grazing, pasture land. It would not be necessary to take out the stumps to render the grazing lands of the best quality of grazing lands. He has purchased land of the company in Township 26 South, Range 3 West, when his father and he were in partnership. The land was bought in his father's name, and they bought in quite a lot below there, in Section 4. He could not just say how much they paid an acre for the land. They bought it at all prices. They bought one whole section, taking the whole section through, for a dollar an acre, and then they paid as high as three dollars, he thinks; he is not sure, but thinks, from $3 to $3.50 an acre was the highest. They bought qutie a lot at $2.50 an acre, and then a whole section at a dollar an acre. They bought that section about when the land was first put on the market. They made an application and offered to pay a dollar an acre for it, as much as his father would pay to the company, and they did not want to accept it, and sent a man up there to look it up; it was covered with oak grubs and there was

no other timber on it, only oak timber; when the man went back, the company wrote that they could have it for a dollar an acre; he thinks the man was George H. Andrews, located at Portland. That was the lowest price they paid; that land was very rocky, but it was fine grazing land; and they wanted it for pasture; it gave an outlet, and they wanted it for pasture, and that was all it was used for.

Q. Mr. Tipton, what is your opinion as to the effect of the railroad company selling the lands of the grant to large timber companies?

Q. The large timber companies in large tracts, and in withdrawing the lands from the market, failing to sell to actual settlers at $2.50 an acre?

A. Well, it has kept settlers out. It has been a drawback for settlers coming in and taking up the land, because if they came in and took up the even sections, it would throw the settlements so scattering that they could not have any schools, and could not get roads, nor anything of that kind at all. That is the main drawback. That is one thing that has hurt our country up there, is big land holders, in my opinion. That has hurt our country, the big land holders.

Whereupon, on cross examination, witness testified, that he and his father came to Oregon in 1854, when he was two years old. They came from Missouri, and his father and mother took a donation land claim on the North Umpqua; they each took a quarter section; they got here a little too late to take a half section each. They

got 320 acres under the Donation Act of September 27, 1850. His mother died on the donation claim, and his father came down to Roseburg and lived with his daughter a short time; he came down in the fall and died the next spring. His land is four miles right up the North Umpqua River from where the donation land claim was, and he owned 1,240 acres of land. Witness had a fine farm up there. He did not farm more than 100 acres, that is for hay and everything, the balance for grazing and pasturage. He bought that land about fourteen years ago, and sold it to George about eight years ago; it has not been subdivided since he sold it, but it has been sold now to another party, and all kept together. He owns a lot in the town of Roseburg, where he lives, and that is all the land he owns. While he owned this 1,240 acres he was in the stock business. It was about 20 miles east of Roseburg, and it was a stock country around there where he lived. It was really a stock country, but it was a good farming country, but people did not farm it so much. They used to farm it pretty heavy. They threshed in one season in particular 6,000 bushels of grain off of their place, about twenty-seven years ago; since that time the farm has been utilized mainly for grain enough to feed the stock, and for stock purposes. He is acquainted, in a general way, but not by legal subdivisions or by sections, with the lands lying east of Roseburg, between the Calapooia River and Myrtle Creek. Myrtle Creek is a branch of the South Umpqua and the Calapooia is a branch of the North Umpqua. There is an area on this map, Defendants'

Exhibit 259, marked in yellow, which were lands lost to both grants by adverse entries, that is, lands that were taken under the donation act, or homestead, or pre-emption act, prior to the grant. He notices the yellow field on both sides of the North Umpqua, as far up as Winchester and Glide; that land was all taken, and the railroad company got none of that except that shown by the small green spots in there. There is 330 acres of land that his father owned in there on the North Fork of the Umpqua, at the mouth of Oak Creek, and that was all taken under the homestead, or donation law, prior to the railroad grant, before the railroad ever came through there. He remembers when the railroad was built to Roseburg, but he could not tell the year, it was somewhere about 1881. It was extended a few miles south to Glendale after that, but it was quite awhile before the train ever passed through the pass, and then it went from Glendale to Grants Pass and stopped there awhile, and later on went through, but he could not tell how long it stayed at either place. The unsold lands of the company joins the Forest Reserve, on the headwaters of the Umpqua. Referring to Defendants' Exhibit 259, these that are in brown shown on this map, were lost to the company by reason of being in a Forest Reserve. He knows about that Forest Reserve, but does not know exactly where that line runs through there. He notices that above Glide and south of Hawthorne, on the Calapooia, there is quite a body of timbered land in there belonging to the company; and that some of this in green is still owned, and that in blue has been

sold. He understands the map shows the blue lands as having been deeded by the company. He notices that nearly all the land on Calapooia Creek is colored blue, and would be deeded, and the only green that is left is down towards Hoaglin and east and northeast of Glide, in that vicinity. Myrtle Creek is out where, on the South Fork of Myrtle Creek, there is a little post office called Nugget, and he knows that place. Around in that section there is a good deal of railroad land that is unsold, according to this map in green. He has been through these unsold portions in there, just riding through gathering stock. Some of this trail goes from Nugget over to what is called Deer Creek, and he has been through on that trail. Deer Creek comes into Roseburg; the trail goes through that country, and he has been through that trail quite often. In riding along, going back and forth, he would be going from Myrtle Creek back to Deer Creek and looking through. There are people living all through these mountains, that have a few head of cattle, and he was buying cattle and picking them up from ranchers in there that had stock to sell. He was buying them for George Cole, a butcher in Roseburg, and he has been at that for the last ten years. These cattle that the people on these ranches have, where they don't range on their own land, range out on the commons; they have these railroad lands and the even sections to range there, and the ranchers could pasture the railroad land, without the railroad company should fence it, and that it did not do. These ranchers fence what land they want to farm, what they want to

raise hay and the like of that; they have a few acres that would be fenced and the balance would be outside of the fence, what they want to hold. Most of these men have stock in there. They generally have cattle and some have sheep; they raise the cattle for the market, for the money there is in them. Some of these ranchers have as high as 50 head of cattle. He bought as high as 60 head and upwards of one fellow, who was a rancher, and had bought his place of 160 acres. He bought 60 head and had a good stand left; his cattle ran out on the commons. If all these railroad lands were fenced up and owned by settlers, he would not have much pasture, but other people could have. Most of this unsold railroad land there is pretty well timbered. There are no saw mills in that section in up there by Nugget. This territory that he is especially familiar with is about 25 miles from Roseburg and gets into the Cascade Mountains pretty well. These ranchers up there, most of them, settled not only on the headwaters of the little streams, but along the streams and on the uplands. There are nearly always springs nearly all through these uplands, and they are well watered. In going through that country he did not notice very many old cabins on the even sections, that had been abandoned, where the timber was; there are some, of course. There are some of these people up there that have lived there until their children got so they had to go to school, and they moved out just as he did. He lived on his ranch until his children got up so he had to school them, and he moved to Roseburg to school them. He knows of some sections

where they had built school houses. The railroad company has paid for over half the school houses and has paid half of the support of the school for nine months. There are not many settlements that have nine months school in the year, but the railroad company would pay half the expense for that nine months school, in some of these sections, and the railroad company had no vote on it. The railroad company contributes its proportion of the expense of building the roads that are built; if they have the land they have to pay the taxes. The difficulty of getting the roads through is a difficulty which the railroad company meets just in proportion to its holdings; and if people would settle on there, the people could put the roads through, and he thinks there is no reason why they could not get them through. They would have to pay taxes only on what they own; and they would have to contribute their proportion of the expense of that road to the extent of what they owned, unless it was paid out of the general fund. Most of these lands that are covered with timber could be used for pasture until the timber was taken off. The stock would run loose through the woods. They would have to be cleared for farming. In his judgment the soil and topography is such that about seventy-five per cent of these lands, that he knows of, could be made agricultural if the timber was removed; that is, it could be made ready for farming purposes after the timber was removed. It would not be necessary to take out the stumps to use it for pasturage. They would just cut the trees down, burn them up, get rid of the timber, and then sow the

grass in the stumps. One would not have to cut the big timber down; one could clean out the underbrush, sow the grass and have good pasture. Fir timber is tolerably thick and a tree carries its foilage the year around; it is evergreen. He can take a person on the ground and show him where he has sown grass in the heavy timber, which is as fine pasture as one ever looked at. He could pasture 25 or 30 cows on 160 acres of this timber land, by leaving the trees standing and sowing grass in among the trees, but would not keep very many just in the timber that way. Goats are the best to keep in the timber, and they eat fir timber pretty well, also hazel brush; they want a variety; they eat maple, hard woods and shrubs, and will clean them up and eat it up pretty well. It is not practical to have goats on every quarter section, but pretty much all of it. He has had a good many goats, but never had over 200 at any one time. When they had goats they were among the first to have them in their part of the country. He does not know how many goats there are in Douglas County now, he has not had any for a long time. They never combed the mohair, they sheared it off and sold it. Thirty per cent of the fleece of a goat has that wiry hair through it, but he does not know that this is discarded by the manufacturer. He does not know anything about the manufacture of it. They just sold their mohair at Roseburg, and he does not know anything about what was the loss to the manufacturer. He refers to the white Angora goat, the longer the fleece the better the goat is, but he does not know whether the longer the hair, the worse the fleece is.

Q. That is not the reason you sold your large holdings of 1,240 acres?

A. Well, no; I sold my large holding to get out where I could school my children. I was living too far away from school. But I do think that, if those large tracts were cut up so as people could come in and settle, it would be a better thing for our country.

Q. The first thing to do, though, with these timber lands would be to get rid of the timber and make some use of that, wouldn't it?

A. Of course, they would have to get rid of the timber.

Q. They wouldn't want to burn that up? They would want to sell it?

A. If they couldn't sell it, they could burn it.

Q. They wouldn't burn up a quarter section that was worth $5,000 for the timber?

A. There would be no need of it.

Q. They wouldn't do that, would they?

A. I shouldn't think they would.

Q. It would probably go to a timber buyer?

A. Of course——

Q. Just the same as the rest of it has gone?

A. Yes, sir.

Whereupon on redirect examination witness testified, that he was just speaking of the timber as going

to the timber buyer, just the timber, not the land. He had nothing to do except clip off the goat's hair, or wool, sack it up, tie it up and haul it off. They raised goats in that territory, and they ran out on the range and thrived on this growth found in this area. That is what they got these goats for, to run out on the range, slash off a patch of oak grubs or oak brush, and they would put the goats in on it. The large holdings of lands, in the locality of the railroad lands, are not fenced, and the railroad company is no better to the grazing man than the rest of the people. The reason they have only three months school there, is that there are not enough people living in there to keep up the school. The railroad lands are taxed the same as other lands, and the people of the county have not imposed on the railroad company in these matters, that he knows of; the methods of taxation are prescribed by law. He never knew the railroad company to construct any roads for the benefit of the people who lived there, or of their building any school houses, only where they were built by a tax, the same as the other people; the other people had to put up their part of the tax. They contributed what they had to contribute by law. Whereupon on recross examination witness testified, that Glide is two miles from his 1,240-acre place, and about three miles up on the North Umpqua, north of the section east of Glide. The North Umpqua ran through his place and cut one 80 acres of his place in two. His place was about six miles from Glide, northeast of Glide, on the river. He had two sections in his 1,240-acre tract, and owned some rail-

road land. He could not tell how long ago that railroad land was sold. John Livingstone bought a half section of it and witness bought half a section at one time. He cannot tell when Livingstone bought it, but he bought it when the railroad company was selling under contract, in payments. This was about the time the railroad came to Roseburg, in the early days, but he could not tell just when. Livingstone bought by contract and had not paid for it when witness bought it from him, and he had to finish out the payments on the contract. He had a pretty good range for his cattle on that place there. They ranged all over the North Umpqua and clear up in the Rock Creek country, on the railroad lands and even sections, too. They run in the open. Whereupon on redirect examination witness testified, that there are some abandoned homesteads, because others went in there with them with families, and they found they were on railroad land, and moved out, and then they could not stay on account that there were only a few families of them to keep up school, after they had built the school house and all. There was Mr. Comas, Mrs. Rooney, Mr. Lillie and Mr. Langworthy. These lands that these people located were on Rock Creek, and he thinks in Township 26. Hoagland is in Township 25 South, Range 2 West, and the lands there are good for agriculture. Lilly had, he does not know exactly, but thinks, as much as five or six acres in cultivation on his place before he left it when he found out it was railroad land. There is other land where they had some cultivation in, but he does not know how much. He hardly knows how

much it would cost to clear this land with the ordinary stand of timber that is on it. He has cleared a right smart of it, but he always hired the men by the day; but he does not think that ordinarily it would cost over $40 an acre. He cleared on his place heavy fir growth, between 80 and 90 acres of it. He hired the men by the day. That was about 30 years ago when they cleared that and it was heavy fir timber. The underbrush through this timber is mostly maple and hazel and hardwood. Whereupon on recross examination witness testified, that the land which they cleared was the only patch that they grubbed the underbrush all out and just as soon as they got it out they started the plow; as the plow hit a root they had men there with axes, and cut the roots out; by the time they got the ground plowed, all they had to do was hitch to the stump, the fir timber has no tap root, it sits on the ground. This fir grove was not young timber, but was big timber. They sawed all the timber and rolled it into the river. It was on the river bank. They had no saw mills, or access to do anything at all with it. This was about 30 years ago. He does not think it cost over $40 an acre, not more than that, if it did that. The wages for the men at that time were about one dollar a day; and one can now get all the men working on the ranches for a dollar a day, that is all they pay now, a dollar a day on the ranch, unless it is in harvest, and then they pay a dollar and a half a day with board included. He has never tried to grub out any of that heavily timbered land, except this grove, which they grubbed out and put in corn. That

grove was on his father's donation land claim, in below Glide on the Umpqua. It is not in the yellow field, shown on Defendants' Exhibit 259, but above that. That yellow field is on the south side of the river. His father sold his land before his death; he had sold everything. These people that settled on these railroad lands, settled there before it was surveyed and he thinks it must have been 12 or 14 years ago, but he could not say positively. He has seen some of these abandoned homestead entries, where the homestead entryman got his title, and the cabin is still standing; but he does not know if that land has passed to the timber companies. He knows of one place there where it has not passed to the timber company. There is Mr. Shoup, he sold his homestead, because he had to go out to school his children. That is on Rock Creek. He could not tell what he got for it, but Mr. Bellows in Roseburg bought it. He is not a timber man that he knows of; and he does not think he is in the timber business at all. Bellows does not live on the place; his boy owns part of a store in Roseburg. The property is not occupied now.

Q. You know, don't you, that all through the Coast Range and the Cascade Mountains there are homesteads that have been laid on these timber lands, and that the people, when they got the patent—single men, for instance, particularly—have sold the timber land to these timber companies?

A. Well, now, to tell you the fact, I don't know of one now.

Q. You cannot recall one personally?

A. No, I cannot. No, I cannot.

Q. But you have seen these cabins in there, haven't you, that are not occupied and abandoned, in the even sections?

A. Now, in the forest ranges, I know up there there is lots of cabins on nearly every quarter section, that the forest rangers took it from them, on account it was timbered. They claimed it was not agricultural land.

Q. They never got any title to that?

A. No, they never got any title to that.

Q. But I mean on the even sections, outside of the United States Forest Reserves.

A. Yes.

Q. Nearly all of the even sections, the title has been taken in the same way?

A. Yes, sir.

Q. There is no public land there any more?

A. Well, now, there is people that has taken homesteads right in back of our place.

Q. I am not asking you that, Mr. Tipton.

Mr. Rabb: Let him answer the question.

A. Their homestead cabins stand there.

Q. I understand, but all that even section land, the title has been extinguished by some kind of convey-

ance from the United States? There is no public land left there, is there?

A. Of the Government land, even sections?

Q. Yes.

A. Oh, yes, there is some, quite a little. Oh, yes, sir; there is a lot of Government land left not homesteaded yet.

Q. In that country?

A. Yes, in that country.

Q. That is not taken up?

A. That is not taken up.

Q. Is it timber land?

A. Timber on it, yes.

Q. I mean, is it saw timber?

A. Well, yes, sir; there is quite a lot of saw timber on it.

Q. The best, however, is taken up, isn't it?

A. No. In that Rock Creek country there isn't but two or three claims that is taken up, and got a title to it.

Q. The rest——

A. The rest stands there today.

Q. The rest is all Government land?

A. Yes, sir; the Government land stands there today.

Whereupon on redirect examination witness testified:

Q. That is outside of the forest reserve?

A. Yes, sir. Yes, sir.

Mr. Fenton: On Rock Creek?

A. On Rock Creek, they are outside of the forest reserve.

Q. Do you know why this land has not been taken up, Mr. Tipton?

A. Well, the railroad land is in there, and it throws them so far apart they cannot have any schools nor nothing. That is why it is not taken up. They cannot get roads made into it.

Q. Well, in your opinion, Mr. Tipton, if the railroad land passed into the hands of settlers, do you think the Government land in the even numbered sections would be taken up?

A. Yes, sir. Yes, sir; that whole Rock Creek country would be taken up.

Whereupon on recross examination witness testified, that they would have to clear up this land before they would get very much value out of it, unless they wanted it for stock. Whereupon on redirect examination witness testified, that clearing was required on the lands that were settled there in the early days, lands that have been settled on, and people are living on there now, and that is a condition that all settlers have to meet in that country.

Whereupon W. H. MILLER, called as a witness on behalf of complainant, being duly sworn, testified that he lives at Gold Hill, Jackson County, Oregon, has lived in Oregon forty-one years, and was born in Josephine County. He spent his life at the home place, which was on the boundary line between Jackson and Josephine counties, and which was the east line of the farm that he lived on. He has been engaged in farming, mining and mercantile business, and is at present in the general merchandise business at Gold Hill, in Jackson County, and has become familiar in a general way with the character of the lands in Josephine and Jackson counties, and with the history of the industrial and commercial development of these two counties, since he has become old enough to observe these things. He thinks he is acquainted with the general character of the soil, climatic conditions, the lay of the land, and other conditions that enter into the usefulness of the lands in Josephine and Jackson counties. His knowledge does not extend to any great extent beyond these two counties, and he is not familiar with the southern part of Douglas County. He is familiar with the natural vegetation that grows in Josephine and Jackson counties, and with the use that may be made of that soil there for the growing of horticultural and agricultural products, and with the other industrial uses that may be made of these lands, their natural or artificial products, such as grazing, raising goats, etc. And based upon his knowledge of the general character of the soil of these two counties, he has made an estimate with reference to the

quantity of agricultural and horticultural lands existing among the present holdings of the Oregon and California Railroad Company in Jackson and Josephine counties. He took his list of railroad lands from the bill of complaint in this case, and he included in his general estimate townships 37, 38, 39 and 40 south, ranges 2, 3, 4, 5 and 6 west. He knows that a good portion of that land is in the most mountainous portion of Jackson County, while some of the other lands are in the lower altitude, where the mountains are not so high, and they include some of the roughest land in Jackson County. The lands in Josephine County on which he has made his estimate, he thinks, are not quite as rough land as part of the lands in Jackson County upon which he has made his estimate. He is familiar in a general way with the general character of the railroad lands in the townships mentioned by him, and has been over a good portion of the lands, most of them. The adjoining lands to these that he has been over, are comparatively of the same general character as those which he has been over. While he was not on these adjoining lands, he looked at them at a distance and believes they are just the same.

Q. Now, I will ask you to state what percentage of these lands with which you have become familiar and acquainted within those townships that you have named, referring now to the railroad lands, the description of which you got from the bill of complaint in this case—what percentage of those lands, I say, in your judgment are susceptible to the growing of agricultural and horticultural crops in paying quantities?

A. The estimate that I made, based on my judgment by being over the land and seeing a good portion of it, I estimate that there would be something like sixty-six per cent that could be used.

Q. That is, two-thirds of the land?

A. Two-thirds.

Q. State whether or not, in your judgment, if those lands were placed in the hands of settlers, the settler could, by making a proper use of the land, maintain himself and family, in tracts of 160 acres or less?

A. I think he could, yes.

Q. Are there any of the lands there of such character that a man could maintain himself and his family on less than 160 acres, referring now always to these railroad lands that are involved in this suit?

A. In some parts I think he could make a living on less than 160 acres.

Q. How much less?

A. I think I know of a few forty-acre tracts, one especially in my mind at the present time, that a man could make a good living off.

Whereupon witness testified that a settler there to make a livelihood could grow fruit, grain and small garden, and he knows of instances where settlers have been making a livelihood on similar lands in that same locality. His general estimate of the area of lands includes about 53,000 acres, and if he made no mistake, includes all of the railroad lands within the townships he

has named. He is familiar with the general history of that territory in those townships as to the sale and disposition and use of these railroad lands within those townships. He does not know about the date when the Railroad Company withdrew these lands from sale, but he knows they were taken out of the market, somewhere about January 1, 1903, he thinks it was.

Q. I will ask you to state whether the manner in which the railroad company at first sold these lands in large tracts, and afterwards withdrew them from sale entirely, has affected the development and settlement of that territory?

A. It has.

Q. In what way? Has it promoted settlement or has it retarded settlement?

A. No, it has retarded settlement.

Q. To what extent?

A. Well, to quite a large extent. In other words, there is a great deal of land, if the people could have bought, they would have improved it and made homes.

Q. I will ask you whether or not, in your judgment, if those railroad lands had been disposed of in 160-acre tracts to settlers, that territory would have been settled up and developed, and now be occupied by persons living upon them and developing them, cultivating them and living off from the products of the soil?

Q. What is your best judgment, Mr. Miller?

A. I think they would.

Q. I will ask you whether, in your judgment, the manner in which those lands have been handled by the railroad company, including the withdrawal of them from sale, has affected the development and settlement of the intervening even numbered sections?

A. I do not believe I can answer that question.

Q. You have no opinion as to whether the withholding of the odd numbered sections from settlement and development has had any effect upon the settlement and development of the even numbered sections?

A. I have not thought of it that way.

Whereupon witness testified that not all of the even numbered sections have been settled upon and developed, and he could not answer to what extent with reference to the railroad lands in these townships that he has mentioned the even numbered sections have been settled upon and are now occupied by settlers. There is some of it that has not been settled upon. He thinks that if the railroad land had been opened for settlement, the other land would have been settled up more than what it has been. In his opinion, the uplands in the foothills could be used for horticultural and agricultural purposes, and in his opinion, the lands available for agricultural and horticultural use are not limited to the valley lands. Some of their best fruit is raised on the higher lands, and the high lands are adapted for grape culture. They grow grapes among other horticultural crops. There are many different kinds of berries—raspberries, blackberries, strawberries; also fruits such as apples, peaches,

prunes, pears. Grapes have been cultivated quite extensively in some parts of Jackson County especially, and some parts of Josephine County. Some of the grape culture is an old industry; some of it is new. By that he means that it is old in some parts of that country and is new in some other parts. These lands are not all covered with timber. On some parts of it there is quite a bit of timber; on other parts the timber is not so good —it varies.

Q. Well now, does your answer with reference to the availability of those lands for settlement purposes, does that or does it not apply to the lands that have timber on?

A. It applies to both.

Q. So that before it could be used, then, for these other purposes the timber would have to be first removed?

A. Yes, sir.

Q. Have you taken into consideration those conditions and the cost of removing the stumps and preparing the soil for horticultural and agricultural use? I say, have you taken those conditions into consideration in your previous answers as to the availability of that soil of those lands for agricultural and horticultural use?

A. Yes, sir.

Q. Is your opinion in that respect wholly speculative, or is it based upon observation of yours as to

similar use of other similar lands?

Q. Do you understand what I mean, Mr. Miller?

A. I am not sure that I understand the question.

Q. The question is this: Now, in testifying as to the use that can be made of these lands for the growing of fruit and grapes and berries, is that wholly theoretical with you, or have you seen lands of that kind actually used for that purpose?

A. No, sir; I have seen them actually used for that purpose.

Whereupon witness testified that the climatic conditions in that territory are favorable for the growing of these crops which he has named. The elevation there in these townships varies from 1000 feet to 4000 feet, and he has seen grapes, fruits and berries grow at an elevation 2200 feet. He has taken the elevation into consideration in estimating the quantity of these lands that can be used in the manner testified to by him. It is rather hard to say how many acres of good fruit land is required to make a comfortable living for a settler and his family down there, referring to the good fruit land in these railroad lands; ten acres of good fruit land is enough, referring to the fruit land part of these railroad lands. He knows of instances where families are making a living on as low an acreage as that on lands similar in all respects to the railroad lands. In his opinion, some of these railroad lands concerning which he has testified, are as good as the best fruit lands around Grants Pass. There is quite a considerable quantity

of these railroad lands of that character—which is good fruit land; there is no large amount of it, but there is quite a considerable amount of it—good fruit land. Lands of this character are distributed throughout the different townships of the railroad lands. He does not call to mind any of these railroad lands that are actually under cultivation at the present time. He thinks the parties have bought them or have title to the lands, to that which they are farming, and they are not involved in this suit.

Whereupon on cross examination witness testified that a portion of Josephine County was created out of Jackson County, and it has been Josephine County ever since he knew anything about it. The line was straightened out at one time a good many years ago. Some portions of Josephine County are considered rather rough, mountainous country. A good portion of Josephine County is mountainous land, quite a good deal of it. His father owned 160 acres, taken up by him as a homestead before witness was born. It is about fifteen or sixteen miles from Gold Hill, but the nearest postoffice when he lived there was about eight miles. Grants Pass was their place of business, which is fourteen miles away. This place was on the Applegate, south, or southeast of Grants Pass. He does not know how long the Applegate country has been settled—it was before his time. Some donation land claims were taken up in the Applegate country. He thinks he said that sixty-six per cent of these lands with which he is familiar in a general way, could be used for agricultural or horticultural purposes

after the brush and timber is off. He thinks there is some of this railroad land with which he is familiar that has good saw timber on it. Some parts of the timber in Josephine County is pretty good for saw purposes, but not in that portion about which he is testifying, that is, those townships are not so very good. He became acquainted with these townships about which he has testified, by mining and prospecting, which he followed eighteen years, mining quartz and placer both, and locating mining claims and operating mining claims in the Missouri Flat country, the Applegate country, and Horse Creek country, but he is not interested in mines now. There are some pockets there, but it is not a pocket country. The mining is placer. Gold is all he had anything to do with. He mined off of some pretty good land. Some of the placer land they have, is some of the best agricultural land they have. He can show some very good farming land where they are quartz mining in the fields, and where they are farming all around them. They go down and find the quartz below the soil, and he can show one place of that kind. Gold Hill has a population of something like five hundred, and is on the railroad. Some of these grapes are shipped. Mr. Carson for one, owns the Redland Nursery on the Applegate—everybody knows his grapes, and he thinks he ships some of them to Portland. They are of different kinds. Some of them are Tokays. There are some grapes grown around Jacksonville, right on the top of the mountain, 2200 feet elevation. Jacksonville is about 1600 feet elevation; Ashland about 1800 feet, and Med-

ford about 1400 feet. The Rogue River Valley runs in elevation, he thinks, about 1000 feet at Grants Pass to about 1700 feet at Ashland, and practically speaking, the valley part, the low part, is all level land. There were lots of oak grubs and oak timber around Jacksonville and Medford at one time, but not very much fir timber. Part of the land between Jacksonville and Medford is the best kind of farming land, and has been for fifty years. These grapes grown there on the J. N. T. Miller place are not down in the valley, that is, up at Jacksonville, which is not in the valley but on the higher land, on the foothills. The slope leads five miles west from Medford up to Jacksonville, and J. N. T. Miller's place is on the foothills and extends up above. He knows the Hanley place there, and it is all level, black muck soil, except Hanley Butte. He does not know how much they want for the orchard land around south of Medford, but he knows there is some good orchard land, but he does not think they are selling it at $1000 an acre within two miles of Medford now. He has heard that they had sold some of it for that price, but he does not know it to be a fact. Some of the mountain lands are better fruit land than the low land.

Q. Well, now, answer my question. Do you consider that the lands in the foothills, up in these mountain lands, acre per acre, are as good lands as the Burrell orchard land, for instance, south of Medford that they get $1000 an acre for?

A. Not to take the whole, that is take all the land;

but that that is good is as good.

Q. Yes, if there is a shirt tail full there that is good, why it is good. That is what you mean?

A. No, sir.

Q. Well, do you mean to say that there is any considerable per cent of these railroad lands that are like the lands that I refer to around Medford?

A. No, I didn't say that they are like that Medford land.

Q. Well, that is what I am asking you about. Is there as much as one one-hundredth per cent of all of these railroad lands like any of those lands down there?

A. One one-hundredth per cent?

Q. Yes, one acre in the hundred equal to those lands of the Burrell Orchard Company, or of Johnny Olwell, or of old man Stewart, or of any of those men that own those fine lands around Medford?

A. I don't know what percentage, but I can show you just as good fruit, land will raise just as good fruit as the Burrell land or Olwell land, either one, and it is not in the valley.

Q. You will find it on the hills here and there in spots?

A. Yes, sir.

Q. Here and there in spots?

A. Certain patches, yes.

Q. You don't undertake to say, you don't want the court to understand, that all that land is of that character?

A. No.

Q. Or that any considerable per cent of it is?

A. No, I never said it was all like that.

Q. You don't want the court to understand that a large per cent of it is either, do you?

A. I want him to understand there is portions of it is as good fruit land.

Q. Small portions here and there, is that right?

A. Small tracts.

Q. Here and there through the grant that you are familiar with?

A. Yes, sir.

Whereupon witness testified that he has been engaged in the merchandise business going on four years. There are no vineyards out there where they manufacture wine, but no one can show any better vineyard than the Redland vineyard, which has a good many acres, he does not know how many. He does not know that he can name another vineyard in Josephine County, but he can in Jackson County. He knows that some of them in Jackson County ship their grapes. They used to manufacture wine in Jackson County and sell it, but he does not know whether they do now or not. It was not sold generally. He does not think there are very

many grape farms in Josephine County of the character of the vineyard of which he speaks on the Applegate. There are more of them in Jackson County. There is the one that he has named in Jackson County, but there are no other large ones; there are several small ones. Most of the farmers have a small vineyard for their own use, and do not sell many grapes. He is not a timber cruiser, and never estimated a piece of timber land to estimate how much timber was on a forty or a quarter section, not to try to be accurate at all, but he has figured on a few pieces somewhat, but never made a business of it. He tried to buy some of this railroad land quite awhile ago, but does not remember the time. He tried to purchase the land and the company would not sell it to him at any price.

Q. Did you make application on these blanks that were circulated around the country here four or five years ago trying to get people to make applications?

A. No, sir.

Q. Did you have any of these timber brokers apply to you to get you to send an application for $2.50 an acre to get a good quarter section of this timber land?

A. No, sir.

Q. You never did that or had anybody apply to you to do that?

A. No, sir.

Whereupon witness testified that Defendants' Exhibit 365 is somewhere nearly correct in its location of

the boundaries of Josephine County, Grants Pass, Applegate Creek and Gold Hill. He thinks that the map is fairly accurate of the streams, as far as he can see them, and the location of these towns, omitting the small branches of the streams. It looks to be about right so far as he can tell. He knows where Glendale is, but he is not acquainted in Douglas County. Jacksonville is shown on this map about five miles due west of Medford, and he thinks that is about right. He has been in the western or southern part of Josephine County, down at Waldo, but not very far off the wagon road. The lands with which he is familiar, with reference to Grants Pass, are southeast of Grants Pass, in the Applegate country, and about Wilderville and Murphy, and Davidson, and Kubli, and Applegate, which is in Jackson County. Applegate is a postoffice, and the Applegate Creek is in both Jackson and Josephine Counties. He was just prospecting through these lands, riding through them for the purpose of looking after mining interests, and was not looking for timber especially, just noticed the timber as he went through. He has driven stock in there very little; has done so some of the time, but he is not a stock man, but at that time he drove some stock to Williams Creek, a tributary of the Applegate, for the purpose of putting them on the range. It was then and is now customary for farmers who live down on the Applegate to drive their stock out into the mountains to range during the summer over public lands as well as the railroad lands wherever they were not enclosed.

Whereupon defendants offered in evidence Defend-

ants' Exhibit 365, which was received in evidence, subject to the official census reports, and subject to any corrections that might be made by the official figures of the census of 1910, which exhibit is hereinafter set out and described and made a part of this statement of the evidence and identified as such.

Whereupon on redirect examination witness testified that he did not know of any of these donation claims being located up in the hills in this general character of territory that he has described. They were mostly down in the valley proper. Some of these donation land claims ran back up on the hills a little bit, but they were mostly on the level land. He thinks the roughest part of Josephine County is in the south and southwestern part. He does not think that the townships about which he has testified, are in the roughest part of Josephine County. He is acquainted with the decomposed granite soils in Josephine County somewhat, and knows that it is being used quite a considerable for horticultural and agricultural purposes. He is not as familiar with the lands in Josephine County as he is with those in Jackson County. When he says that these fruit lands that exist in these railroad sections about which he has testified, are not like the lands around Medford, he means that the land is not level, and is of a different soil from that, a different altitude, and the soil is generally not so deep on the mountains as it is in the valley. The hill lands grow good fruit; wherever one finds land that is fruit land on the mountains it grows good fruit. It is a different character from the fruit land around Medford. He did

not restrict himself exclusively to fruit lands when he testified that two-thirds of the land covered by his testimony would be available for agricultural or horticultural use, and it is not necessary that it should all be fruit lands in order to be susceptible to settlement. There are sufficient quantities of this fruit land among these railroad sections to be available for practical commercial use, and he would say that about two-thirds of the quarter sections included within these railroad sections concerning which he has testified, contain enough fruit land and agricultural or horticultural land to support a settler and his family if properly used. The towns in the Rogue River Valley, such as Medford, Gold Hill, Grants Pass, Jacksonville and Ashland, are supplied with good schools. Some parts of the country where these railroad lands are situated have good country schools. Usually the lands are not opened up in the way that would attract settlers. It is not opened up by good roads. He does not know whether the road and school facilities would be considered sufficient at the present time. He does not mean to testify that this vineyard spoken of by him in Josephine County, is the only one in that county, but he means that it is the only one that he can name, of commercial value. He believes the better the land the better the timber. He knows of instances where the vacant railroad lands involved in this suit are of the same general character as those settled upon in the even sections adjoining.

Whereupon W. J. PENGRA, called as a witness on behalf of complainant, and being duly sworn, testi-

fied, that he lives in Lane County, Oregon, about three and a half miles east and a little north of Eugene, which is his post office address. He lives within a mile and a half of the main Willamette River, and he is fifty-five years old and was born in Lane County, Oregon. He has followed the stock business for twenty-five years, and the last four or five years he has been farming a little. He does not run stock now, to speak of; a few cows, some hogs, and a horse or two, and he raises a little hay, a few strawberries, some kale, a little corn, and such as that—diversified farming. He lived for a year and a half above Goshen, on what was known as the old Spores place, for five years, which is about seven miles north and east of Eugene. He has lived on no other farms in Lane County, other than those he has mentioned. While he was in the cattle business he had occasion to go around through the county, and bought cattle all over the county, more or less, and became pretty familiar with the general character of the soil there and the way it lays. He bought cattle in the Mohawk country, McKenzie country, Camp Creek, Fall Creek, the Willamette and Siuslaw, and has been all over that country more or less; and has been around over the county to some extent on other errands, in addition to buying cattle. His traveling about the county was largely in connection with his cattle business, and he observed the extent to which the country there is settled up and used for farming purposes, in a general way, referring to the parts of the county with which he is familiar. He knows that there are a lot of railroad lands

involved in this suit, in the Mohawk country and some in the McKenzie. He does not know where they all lay, or anything about that. He has never run any lines. He knows something about the general character of the soil through the foothills and in these little valleys, that he speaks of, and knows some of the Booth-Kelly holdings in the Mohawk basin, and a little on the Mill Creek country, but not a great deal of it. He does not know anything as to the railroad lands particularly. He knows as to the lands that lay near the valley along the foothills there, and does not know whether they are railroad lands or government land, or what they are. He does not really know anything about the townships, but he could point out the little streams on the map, Defendants' Exhibit 259. He has been on Mill Creek up perhaps a half or three-quarters of a mile above the Wendling Mill, and that is as far up as he has ever been on that stream. He has been on the Shotgun and in above Shotgun and across the ridge, and down to the Calapooia, McGowan Creek, and some of these little creeks, and all of those little tributaries that come in from the west; and has been on almost all of those little streams that flow into the Mohawk, and also on the east. He has been across the mountain on the McKenzie river. He has been off the stream, going both sides, principally on the north side of the stream. He has bought cattle on Lost Creek, the Pleasant Hill country, up on the Coast Fork, out in on the headwaters of the Siuslaw, and down on the Siuslaw and along the Coast; and along the Siuslaw westerly through Lane County to the Coast.

He has not been up and down the main Siuslaw River, but simply along the road down as far as Mapleton, at the head of the south tide, and some of these little creeks that come in there. In the Mohawk country, he thinks as far back as he has been up those creeks and over those little ridges and breaks, he would say that perhaps fifty per cent of that would be suitable for agriculture when the timber and brush is taken off. The balance of the land there could be used for grazing. Some of that land is fairly good for grazing. He does not know anything about the odd or even sections, but he speaks of the land as a whole and with reference to the country generally. He has seen a little of the difficulties that encounter the settler in the removal of stumps and clearing of land of brush, and preparing it for cultivation; but he has not had any experience in the hills himself, but has had some experience elsewhere. Some of the land that he had experience with was formerly heavily timbered. Usually on the best soil one finds the best timber.

Q. Now, bearing in mind your previous testimony as to the proportion of this land that might be used for agricultural purposes, I will ask you whether, in your opinion, based upon your own experience individually and also upon your observation of the experience of others in that vicinity, whether in those localities with which you have become familiar, a settler could maintain himself and family upon 160 acres of that land?

A. Well, yes. It would depend something upon the man, I think.

Q. That is true in all new countries, is it not, Mr. Pengra?

A. I think so, yes.

Q. It is only the hardiest who really reduce new countries to cultivation—isn't that true?

A. Yes.

Whereupon witness testified, that the lands along the Siuslaw, back from the river, are very abrupt, a great deal of it. In the upper part of the Siuslaw country they are not so steep, not so abrupt. He does not know much about the lands along the main river back from the river, except on the headwaters of some of those tributaries of the Siuslaw. Some of those lands are good agricultural lands, while there are a good many of them that are covered with timber, some of them are under cultivation. As a general rule lands that are covered with good timber are susceptible to cultivation. Whereupon, on cross examination, witness testified, that he had lived in Springfield a good many years, that as a stockman going over the timbered portions that he has mentioned, he was buying cattle. The people he bought from ranged their cattle in the mountains, principally in the brush, and ranged them over the outside lands, principally, adjoining their places and he supposes over the railroad lands the same as the others. He does not know how much country these cattle did range over, sometimes the cattle would range back for two, or three, or four miles. He does not know that the cattle during part of the season ranged in the mountains. He thinks

they would turn the cattle outside and let them go with their calves and get them back in the fall, that was the common way of doing it. Some of these cattle were branded, some were ear marked. They were branded, or marked, with some mark. He does not know that these people made their living altogether that way. They all had a little stock; some of them made shingles and cedar posts and had a deerskin or two to sell occasionally. They had gardens and orchards. Most of these people were on the streams and some of them were on the benches back of the streams, but most of them were on the streams. He had noticed abandoned claims in his travels through this timbered country, but he does not know whether they were on even sections or on homesteads, or whether they had gotten title or not. A good portion of the timber in that country was good merchantable timber and some of the Siuslaw country had very fine timber, and some had no timber at all, part of it having been burned off. The fifty per cent of this land that he had stated was agricultural, in the territory over which he had been, includes such land as has soil that could be put to some kind of cultivation if the timber were off, and that is the way he classified it. There is none of that land that is extremely level, it all has some little slope to it, there would be benches and then a little steep place, and then a bench, maybe a little slope off to one side or the other, whichever way the land happened to lay. He could not say that fifty per cent of the railroad land would be agricultural, but he thinks all the land that he passed over, whether even or

odd sections, would be about fifty per cent that would be agricultural lands, when the timber is removed. Whereupon on redirect examination witness testified, that the general character of those foothill lands are rolling and broken, and whether the hills are large or small depends on how near one comes towards the summit of the ridge; in some instances the ridges lay near the valleys and the hills would be more abrupt. Where the main ridge breaks back, the hill would be more gentle in its slope. While it would not perhaps be level there may be level places, practically level. But there will always be some slope to it; there will be little benches, ravines and hills. In some instances in the unsettled portions of Lane County the roads follow the streams; as a general rule though the roads follow the little ridges. In making trails through these foot hills, it is easier to make a trail over a ridge, or follow a ridge and backbone of a slope that comes down from the ridge than it is to follow the creek, from the simple fact that there is more or less fallen timber in the creek bottom, and the ridges are more accessible. These roads are not for the most part so abrupt as to be inaccessible. The lands that he passed over have been along the Mohawk Valleys, or near the Mohawk Valleys. He does not know whether the Booth-Kelly Lumber Company owns any part of these lands or not, but he supposes they do. They do at Wendling, he knows. He does not know anything about the description of the railroad lands, nor where they lay. In this general territory, concerning which he has given an estimate of the agricultural lands, he

does not know what are or what are not Government lands, railroad lands, or Booth-Kelly lands, or what the ownership of the lands may be.

Whereupon W. A. RENNE, called as a witness on behalf of complainant, being duly sworn, testified that he is forty years old; lives about three miles west of Walker Station, in Lane County, Oregon, and is a farmer by occupation. He has lived in Oregon since the winter of 1887-88, and before that lived in Illinois. Referring to Defendants' Exhibit 259, he is acquainted from Creswell west, on Camas swale, the country that is situated over on the headwaters in the Siuslaw country. The Camas swale is around Creswell and west. Creswell is in township 19 south, range 3 west, and the Siuslaw country mentioned by him is west of Creswell, extending over as far as Loraine, but he has not been west of Loraine to speak of. He has been south of Loraine as far as Drain, but has not been over the lands of the company northwest of Drain to speak of, but has been over these lands indicated in green north and east of Drain; from the railroad clear back down to Creswell, in this general community, in townships 19, 20 and 21 south, ranges 3 and 4 west, and practically he has been over all of it, hunting and trapping. He has lived at Walker about twenty-five years, and engaged in farming. He owns one hundred and twenty acres altogether, which is about three miles north and west of Walker. One forty is in section 30, one in 29, and one in 32, all in township 19 south, range 3 west. He has about six acres that he plows now, besides possibly an acre for

garden, such as that, and his land is all under fence. He is acquainted with the agricultural possibilities in that vicinity concerning which he has testified, also about the possibilities of the soil in producing crops, and the necessity of clearing.

Q. Now, in your opinion, Mr. Renne, what per cent of the 160-acre tracts of land in this area that you are acquainted with would be suitable for settlement; that is, that a man could go on there and farm them and make a living?

Q. On a 160-acre tract, taken by legal subdivisions of forty acres, but not by a quarter section?

A. I understand you he is to take four forties that are adjoining each other.

Q. Yes.

A. It don't make any difference in what shape, or anything like that?

Q. No.

A. Well, I think in this territory that I have been over, that 75 per cent of it could be utilized that way.

Whereupon witness testified that a part of this territory is settled upon by people engaged in agricultural pursuits and raising fruit—is quite a fruit country, and there is a large orchard there in that vicinity. He could not say positively as to the sale of orchard lands around Creswell, only what he has heard, that they are selling at prices ranging from $400 to $700 an acre. He makes a living on his place, and he thinks his place is just

about an average with the ordinary 160 acre tract that a man could select in this general country. He raises grain, hay, fruit, vegetables of different kinds, on his place, and the conditions as to the other lands in this area are the same as it is on his land. He keeps stock on his place too, goats, sheep, a few hogs, couple of cows, and chickens.

Q. What effect, if any, Mr. Renne, has the failure of the Railroad Company to comply with the conditions in the grant relating to the sale of these railroad lands to actual settlers at $2.50 an acre—what effect, if any, has that had on the development of that country.

A. I think if all of this land could be taken as in a body close together, different families, so as they would have neighbors close, etc., it would have been settled up, the most of this land would have been taken. It has kept the roads from being built into these places, schools, churches, etc., and if I understand the school law, it takes so many pupils to have a country school started —ten, I believe—I would not say positively but six to start a school, before they could have school.

Q. Don't the laws of Oregon require them to have ten pupils in a district before they can organize a school, and have to have six pupils in order to maintain the school?

A. That is my understanding, yes.

Whereupon witness testified that at Cottage Grove up the Coast Fork—that is what it is called in his

country—as far up as Black Butte quicksilver mine, he is acquainted with the lands shown on this map, Defendants' Exhibit 259, marked in green. It would be south and east as far as Black Butte mine, and then as far north from the Black Butte mine to Row River, which leads in east of Cottge Grove, and empties into the East Fork. This railroad that leads out from Cottage Grove follows up Row River, practically towards Bohemia, and runs through townships 21 to 22 south, in ranges 1 and 2 west, as shown on this map. He has trapped all over that country one winter, as far south as the Coast Fork, which goes up towards Black Butte mine. Black Butte is a quicksilver mine, but it not up towards Bohemia, it is south and west. He supposes the marking "Black Butte" in 23 south, range 3 west, is meant for Black Butte. The Coast Fork is the river upon which the Black Butte mine is situated, or just a little south of it. He thinks that territory there will average about the same as the other territory of which he has first testified with reference to the possibility of agriculture and suitableness to settlement.

Whereupon, on cross-examination, witness testified that he did not exactly get his knowledge of these lands by going over the streams and trails, but all over through the woods. He got it while he was trapping. He is not a cruiser, or a timber man, and he has not attempted to look at this land with a view of ascertaining how much timber there was on it. Part of this unsold railroad land is heavy timber, and other places not so much. He does not know what these heavy timbered quarter sections

are worth in the market; he has no knowledge on that subject. He owns 120 acres of land. Forty acres of it was railroad land which he bought from the company. He made application for the forty acres in August, 1901, and has paid out on it. He wrote to the company, and he paid $152 cash for the land. They listed it to him at $4.00 an acre on credit. It was timber land in part, fir and brush, all kinds of timber, pretty fair saw timber; part of it is still there. He has not sold any saw timber from his place. It is not too far away for sale of the stumpage for timber. It is about three miles from Walker. There is no sawmill right at the store. There is a sawmill west of Walker, and there used to be one at Saginaw—is yet, but these mills are not running now. The Booth-Kelly mill is away off east of Saginaw in the woods, and they flume their lumber down to Saginaw after it is sawed, and their planer is there. The mill would be quite a distance from his place. The saw timber that is on his land could not be very handily marketed and sold at Saginaw. He has never been offered a price for any of his saw timber and never offered it for sale himself. He has about six acres on his 120 acres that he plows, besides a garden consisting of probably an acre. He has raised on these six acres wheat and hay, a little hay on that, and he raised seventy-five bushel of wheat, machine measure, but did not raise any oats or barley or corn. He raised some hay on this, possibly three or four tons; timothy, velvet grass or mesquite, and some wheat mixed with it. He sowed this as an annual crop. He keeps two

cows, and has seventy-one goats at present, and they range on this brush land of his. He has owned his goats about six years, and sells the mohair from them. If he remembers right, they average somewhere between three and a half and four pounds of mohair per head. They are Angora goats. He got his start from a neighbor about a mile from where he lives, who had fifty head. His neighbor sold his place and moved down near Portland, and witness bought his goats when he sold out. Nearly all his neighborse in the country run a few goats. He has several neighbors located in there within a mile and a half or two miles. He could not say how many are settled within a township there, excluding the railroad and excluding settlements right along the railroad, and excluding Walker and the sawmill, and things of that kind, but there are quite a good many, two or three miles from the railroad, in the foothills, and some pretty good land, some hill land, and some fir timber. Some of these railroad lands are further back in the mountains, and some are not. Some are adjoining that that he bought; there are forty acres adjoining him right on the east, which will average with what he bought. Part of it is timber. This forty is all there is right in there. He has not talked with counsel for the Government about these drawbacks of schools and roads, and lack of settlement on these railroad sections affecting the development of the country. He looked up the school laws himself to see how the school law was. He used to be a director at his school and came to know in that way. He thinks that they can vote a school tax on these railroad lands if they wanted to support these

schools by voting a tax on the other lands just the same. These railroad lands are unfenced, and he supposes they could be pastured if one would want to turn out their stock on the range. A good many of these ranchers that are further back on the hills than he is, have a little stock, and they turn their stock out to range over any unfenced lands. There is pretty good timber on a part of these railroad lands in Lane County. Timber became an item of consideration in value for the timber alone, something like seven or eight years ago, he would judge, but could not say positively. The timber demand has been pretty active in Lane County.

Q. Now, do you know of some homesteads taken in these timber lands, by single men and others, taken for the timber, and then after they got their title by proving up or commuting, paying the cash in fourteen months, they sold out to timber people, got their money, and got $3,000 or $4,000 for them? Do you know of such instances as that in your county?

A. I know of one fellow that bought a tract. Now, I wouldn't say how much there was in it, possibly 160. And then he sold it out, but I couldn't say what he got for it.

Q. Well, he bought a relinquishment, did he, and then laid out a homestead on it?

A. I think it was Government land. He first homesteaded it, and then bought it in in a certain time.

Q. A certain time?

A. Yes.

Q. That is to say he entered it probably, and then commuted by paying the cash?

A. Yes, sir, that is the way he got it.

Q. And then he turned around and sold it?

A. He sold it afterwards, yes, sir.

Q. How long after he had commuted did he sell it? How long afterward?

A. I couldn't say whom he sold it to, or how long after.

Q. You know it was sold for the timber that was on it?

A. I don't know whether it was for the timber, whether they wanted it entirely for that, or for the land besides.

Q. Was it good timber?

A. Pretty fair timber, yes.

Q. Where was this quarter section?

A. It was in west of Walker.

Q. How far west?

A. I should judge five or six or seven miles; somewheres along there.

Whereupon witness testified that he thinks that principally all of the public lands of any particular value in Lane County have been taken. He supposes that they have been taken under the homestead or timber

entry, or in some way, by scrip, and the titles obtained from the Government in that way. He thinks that Lane County has as much timber as any county in Western Oregon. This timber is mainly away from the old settled portions and in the foothills adjoining the valleys, and in the Cascade Mountains and Coast Range. There is not very much of it down in the valley. He has never been a timber cruiser, but has been a farmer in the way of which he has spoken, and has also been a trapper for martin, coon, mink, skunk, anything like that that he could catch—wildcat, cougar—for the sale of their furs and hides. He quit the trapping business about five or six years ago. Before that he could trap successfully. These fur-bearing animals got pretty well trapped out in that locality, they were driven farther back into the mountains.

Q. Well, assuming that the record has that statement—we will not take the time to go back and find it—assuming now that that statement of fact is true, that these quarter sections have been sold at from $3,000 to $5,000 per quarter, good timber-lands in Lane County, that is, $20 to $30 per acre, and that there was no means of disposing of the timber except by cutting it down and burning it up, now, what would a farmer pay for that quarter-section in that situation, for the purpose of making a home of it?

A. I know of land there that, if I was able to and so as I could, I would pay $10 or $15 on acre for any day.

Q. And burn the timber?

A. Yes, sir, and burn the timber. That is what I have done with what I have cleared up.

Q. And you would do that, and then grub the land out?

A. All but lots of the large stumps; take out the smaller ones, or run goats on them and let them kill it out, and then rot out.

Q. What would you say open land in the Willamette Valley can be had for, that is absolutely clear today, and not influenced by the location of a city near it, like Eugene, but ten or twelve miles away from Eugene—old farm land, donation land claims—what would you say that could be bought for, or do you know?

A. I couldn't say positively just what it could be bought for, no.

Q. Don't you know that the bulk of the land in Lane County that is in the old settled portions of it, taken up under the donation law, fairly well improved and fenced, can be bought all the way from $50 to $200 per acre, at the present time?

A. I couldn't say positively.

Q. Well, isn't that about your recollection of it?

A. Something like that, I suppose.

Q. A great deal of the land can be bought for $25 an acre, where some of it is brush and hill, and covered with old improvements, and where there is about half

of it in cultivation. Isn't that true?

A. I think so.

Q. Well, a man would be better off to go down and buy some of this land than to go back into the mountains and buy a timbered piece of land, unless he wanted to buy the timber, wouldn't he?

A. Well, there is lots of it that would be better land than this cheap land would be, after he got it cleared, that is back in the hills.

Q. I know, but he would pay two or three times for it in getting the timber off, if he couldn't get the money out of the timber, wouldn't he?

A. Well, he could kill the brush and such as that out with goats and stock, and be making a profit off it while he was doing this.

Q. But he couldn't very well kill a fir tree that was six feet at the butt with a goat, could he?

A. Not large ones.

Q. A goat don't do much on a fir tree that is six feet thick at the bottom, do they?

A. No, sir. But you take small trees, a goat will kill it out.

Q. But the goat doesn't do anything to a sawlog or sawtimber?

A. No, sir.

Q. He browses on the shrubs and short brush?

A. Yes, sir.

Q. And will climb a stake and rider fence to get to it?

A. He will do that, too.

Q. It don't prefer the evergreen when it can get the other kind—hazel brush and things of that kind?

A. Well, he will take a bite of one kind, and just keep going that way—first off this and then that, and all over.

Q. But he don't bite fir trees, as a rule?

A. I can show you lots of them that has been bit in my pasture.

Q. I know, but he didn't bite a fir tree, that is a saw tree?

A. Oh, no. Fir brush I am speaking of—small.

Q. Oh, just little fir trees that are six or eight feet high?

A. Yes, sir.

Q. He would nibble at a limb as he went by to get a hazel brush?

A. And make a mislick at the hazel, and get the fir.

Q. Yes, but when it comes to clearing saw-timber, you don't use a goat to clear saw-timber?

A. A goat don't like saw-timber, no.

Q. He don't want to eat sawlogs?

A. No, sir.

Q. So all this talk about a goat clearing land is, that the goat is used to kill the shrubbery, and is useful on oak grub land after the oak grubs are cut down and the sprouts come up, to keep the oak grubs from growing up again?

A. Oak grub and vine maple and hazel—all such hardwood as that, that you will find in the hills any place.

Q. Yes, wherever you can cut the oak grub down, or the other hard woods, there are sprouts come up the next year, and the goat is good to keep that down, and will finally kill that tree?

A. Yes, sir.

Q. But it don't have very much to do with a fir tree—I mean a saw tree?

A. No, sir.

Whereupon witness testified that he sold his mohair last spring for thirty-seven cents, and the average price for the last five years has been about thirty cents, running from twenty-five to thirty cents on an average. He does not know how many goats there are in Lane County. He is a man of family, his family lives on these premises, but the children do not go to school; they are not old enough for school yet. They have a school there that he could send them to.

Whereupon on redirect examination witness testified that four dollars was the price placed upon this forty acres

of land that he purchased from the Oregon and California Railroad Company, but that he got a five per cent discount on that price by paying cash. This land was rolling, and adjoining the land that he is now living upon, and he is using it for pasture and such as that. The other forty-acre tract that he applied to purchase from the Railroad Company and was refused, adjoined just east of the one that he purchased. His father lives in section 30, township 19 south, range 3 west; the same section that the homestead of witness is in. His father came to Eugene in the winter of 1887-8, and lived in Eugene a year and a half, or right close to that, and then they moved out on the homestead of 120 acres. His father proved up on his homestead and has been living there ever since. His father's land was rolling, contained some timber, and some of it had to be cleared. Witness was about fifteen or sixteen years old when his father took up his homestead. The family consisted of six children besides his father and mother. Witness was next to the youngest of the children. His father made his home and living upon his homestead. When they put the house on his father's homestead they had to cut the brush out in order to get room enough to put a house in there. His father's place would average about the same as the other lands he went through in that country. It was not necessary to grub all the stumps out before grain can be sown on land that contains a timber growth. The six-acre tract that he is farming has large stumps left in the field and he plows around them, and is raising crops there every year, wheat and hay, and such as

that. He cuts his hay with a mowing scythe. Where the clearing is older the ground has been grubbed out, except the large stumps, and that is cut with a mowing scythe. He cut his wheat this season with a binder, or rather his neighbor did for him, around these stumps that are in the smaller field. His father has about ten acres of land under plow on his place. Stumps are removed by settlers in that community in various ways. Some blow them up with powder, and others by what they call pitting, burning them out; get a fire started around the base of the stump, and keep piling on stuff until one gets a good fire started, and then cover it over with dirt, and keep it covered until the stump burns out. That is called char-pitting, and involves only labor, attention to the fire after one gets it started, that it don't break out; keeping it covered, smoldering in there until the stump has burned out. This soil is productive.

Q. About what would be the average of land that could be made susceptible to plowing on this tract that your testimony has covered, that is, on each 160-acre tract? I am not speaking now of your homestead, Mr. Renne, but I am speaking of the entire tract that your testimony in chief covered.

A. You have reference to the amount that actually could be plowed, if it was grubbed or cleaned up?

Q. Yes.

A. I should judge about thirty-five or forty per cent of it, right around there close.

Mr. Fenton: What do you mean? Right around

close to those figures, or close to your place?

A. Close to the figures—35 or 40 per cent of the land.

Whereupon on recross examination witness testified that he could not state the year that his father took up his homestead, but that they lived in Eugene during the winter of 1887-8, remained there a year and a half, and then moved out on the homestead. He has not figured out what year his father took up his homestead, but if it was in 1890 witness would have been about eighteen years old at that time, and was the next youngest child in the family, and there were six children, three boys and a girl older than himself. He could not say as to whether the older children were of age when his father went out on the homestead. A sister was next older than he, and there were three brothers older than this sister, and he supposes there were two years' difference in their ages, but could not just say, and the three brothers were practically all men grown when his father took this homestead, and stayed with his father on the place, assisting him in the work, and did not work out very much. These brothers slashed the land, rolled the logs together and burned them, and did such work as that. He had one sister two years younger than himself, who lived on the place with his father and mother when they went to the homestead. The girls helped work around the house, but did not work in the field. His father now has on his homestead about ten acres that can be plowed. The balance of the land is brush and timber, which he uses for pasture.

Q. So that your father, with three grown sons and yourself, 18, or about that, after being on that homestead twenty-two years, has succeeded in clearing ten acres? That is right, isn't it?

A. Well, it didn't occupy all these twenty-two years to clear that.

Q. I know, but that is the fact? You have succeeded in clearing ten acres?

A. Yes, sir, that is what is cleared there.

Whereupon witness testified that his fathers' homestead is about four and a half miles from the railroad by wagon road, the nearest station being Creswell. Walker is about the same distance. Creswell is just a small place. He does not know its population in 1910; probably about four hundred people living there in 1910 —he couldn't estimate. Creswell is his father's trading point. Witness trades at a store at Walker; there is just one store and a few dwellings and a post office at Walker.

Whereupon on redirect examination witness testified that his father's place has been under cultivation, he should judge, ten years anyway. He and his brothers are married and have been living away from their father's place for some time; all of the children have been. Witness left his father's place and has been working for himself for the last twelve or fourteen years, and some of his brothers left his father's place before that.

Whereupon C. L. STANDINGER, called as a wit-

ness on behalf of complainant, being duly sworn, testified that he is thirty-nine years old, and his post office address is Molalla, Route 2, Clackamas County, Oregon. He has been in Oregon fourteen years, and has lived in Clackamas County thirteen years, in section 6, township 5 south, range 3 east. About the first half of the time he has been in Clackamas County he was in saw mills, and the balance of the time on a farm. He owns 108½ acres of land in Clackamas County, upon which he lives at the present time. He had owned more. The other land that he owned was adjoining this, and part of it was some that he bought from the railroad company in 1900, in section 11, township 5 south, range 2 east. He purchased from the railroad company eighty acres at $4.00 an acre, by installments, in section 11, township 5 south, range 3 east. He had a little saw mill on it and made a failure of it and sold the whole thing. He intended to make a farm of it, if he could. The present land that he owns he purchased from W. O. Vaughn. It was originally a donation land claim—more or less timbered. Vaughn logged the timber off and he bought it as logged off land. There was no land in cultivation at the time he purchased it, no improvements whatever. He paid $6.00 an acre for it on October 2, 1907. He has slashed about eighty acres of that land, and has had about ten acres upon which he has raised two crops. He slashed the underbrush and stuff, and bad timber that was left after they got done logging, burned it, fenced it and seeded it, and this grain which he raised was where there were small stumps. The land lays so he could

swing a cradle over it, and where there were big stumps logged off, he cut around them, cut a crop of wheat on them. The next year he had hay and cut it with a scythe. He is now grubbing the stumps. The first year he stayed at the saw mill near by, until he had money enough to build him a house, and the place has been his home ever since, and he has made his living from that land and he has had no other means of support than that furnished from this land. He had about sixty acres of this land slashed, everything that the loggers left was cut down, except some of the large doty trees, that is, more or less decayed, that the loggers did not want. He left these big ones standing, and anything smaller was felled. Then the land was burned over, then fenced and then seeded to timothy. As to the ten acres there, he piled the stuff that didn't burn and went in there with a shovel and plow, and tore up the ground and seeded it to wheat. He raised 35 bushels of wheat to the acre off of that, and the next year he seeded that to oats and vetch, and raised 25 tons of hay off of it this summer that way—cut it with the scythe. He has now grubbed thoroughly in there, and he is pulling the smaller grubs, and leaving these big large ones that the loggers left where they fell. The loggers took everything from two feet up, and all those big stumps he left there scattered on this part. He has picked the place where the timber was lightest to begin with naturally, and he is pulling the small stumps and leaving the biggest ones. He can plow around them and drive a binder and mower around them. He is familiar with the business of farming in this general com-

munity in Clackamas County, in the timbered land. Referring to Defendants' Exhibit 259, he lives in section 6, township 5 south, range 3 east, and in the west half is where he owns his land. He has worked on a farm two summers just west of there. It was a home place. It was the Charles Cutting donation land claim. In the saw mill he worked in sections 11 and 12, township 5 south, range 2 east, where these two mills were located. He has been around there all the time, and is familiar with the country for several miles around there — he would say five miles in all directions. He is acquainted with townships 4 and 5 south, ranges 2 and 3 east. He lives at the intersection of these four townships, and the different parts of these four townships he is familiar with. He is very well acquainted with sections 7, 5 and 31, in township 4 south, range 3 east; sections 5 and 7 in township 5 south, range 3 east, and these little tracts marked in green in township 5 south, range 3 east, he is familiar with. He has a general knowledge of the remainder of the land in these townships, and has been over them sufficiently to acquaint himself in a general way with the growth on them and the character of the land and their agricultural possibilities. Most any tract there of 160 acres of these unsold railroad lands would support a family. He does not think one could pick out 160 acres there that would not support a family, and these lands would be suitable for settlement.

Q. Mr. Standinger, what has been the effect of the railroad company's refusal to comply with the terms of the grant in selling to actual settlers in 160-acre tracts,

at $2.50 an acre, if you know, in that community that your testimony covers?

Q. Do you understand the question, Mr. Standinger?

A. Yes, I understand the question. Do you want an answer?

Q. Yes.

A. Well, it has in various ways. One way it has retarded our schools, inasmuch as the schools draw money according to the number of pupils. And there are people in there that would have bought land if they could get it. It has kept settlers out, and kept our schools back. There is a sawmill there now that has practically logged off—no timber handy unless it would be railroad timber; there is a little of that probably they could get—they are moving out of the country. This is an industry out of the country. That is handicapped too. If the settlers had it, they would have cleared off this logged off land, and improved it, and it would be more valuable with the improvements on it, and the stock and everything, than it is now. And there is everything that would have been in favor of improving the country if we had more settlers there.

Q. About how much plow land could they get on a 160-acre tract, a settler on this railroad land?

A. Oh, there is no 160 but what you could get 25 per cent. Some of it considerably more.

Q. Are similar lands settled upon and made homes

of in this vicinity, other than the railroad lands?

A. Yes, sir.

Whereupon, on cross examination, witness testified that his home is situated in the west half of section 6, township 5 south, range 3 east, which he purchased from W. O. Vaughn. The title passed through three or four hands. It was originally the Andrew J. Cutting donation land claim, or a part of that claim. He bought 80 acres in section 11 from the Railroad Company, which was in township 5 south, range 2 east, and he thinks it is the east half of the northeast quarter of section 11, or the west half, he would not be positive now. It is not improved. The man that bought it just fenced it and makes a pasture of it. He bought it himself from the railroad first, contracted for it in the year 1900, and agreed to pay $4.00 an acre, and owned it five or six years before he sold it to the man who now owns it. He sold it with a little saw mill and some odds and ends for $750. He didn't really get any more out of the land than what he paid for it—it was practically a forced sale. Only a garden patch on it has been cleared since he bought it from the railroad company. The present owner does not live on this eighty, he uses it for pasture. It has a house and two barns on it, but the present owner never lived on the place. He uses it for a camp there some times in the summer, and to keep stock there all the time. These stock do not range outside over the country generally. When they are not there the owner has them on his own place. It belongs to W. A. Shaver at Molalla,

who is a large stockman there. Shaver has a large place at Molalla of about 160 acres, probably not that much. He has cattle and a few sheep. Twenty-five per cent of these railroad lands in that vicinity with which he is familiar in those two townships, some four or five miles east of where he lives, up the eastern boundary of the township, with which he is familiar, could be plowed after the timber is cleared. Some of it is in burns, that is, some of it could be plowed without taking the timber off. It is burned in patches. There may be eighty acres there that would have four or five acres burned, and just a little fern, a little undergrowth, four or five acres of timber and then a little opening which is burned in patches. These open places would be very easily cleaned. There are lots of places there where there would be forty acres, half of which would be easily cleared that way, and the other half would be spotted. These open places in these burns that are free from timber, that would not require clearing, are scattered over the different quarters.

Q. And are they small parcels, three or four acres in a spot?

A. Oh, there will be more than that in a spot. Those burns they are irregular. Those burns will cover perhaps thousands of acres, and they are irregular, you know with spots of timber here and there in them. There are farms scattered all over these burns, small farms. People, of course, cannot clear the whole place in a few years. They have houses scattered, lots of houses and

small farms, with a few acres, up to ten or twelve or fifteen acres. Farmers work in the saw mills but very little. Sometimes the young men that are just about coming of age will work in them, but the regular farmers do not depend on saw mills and do not try to work out, they have enough to do at home. They raise hay, wheat, oats, barley, have a few cattle to milk, some hogs and sheep. Some of them have goats where they have land that is brush land. They haul their stuff to market at Canby and Oregon City. Canby is fourteen miles away; Oregon City is sixteen miles. Molalla post office is six miles from his place. At Molalla there is a hotel, restaurant, three stores, a creamery, and a number of residences, two blacksmith shops. It is not on the Molalla River, but is about three miles from the river south. He thinks Molalla is situated on a donation land claim, but is not positive. Most of these donation land claims were taken there from 1845 clear on to the end, until 1873, till the time came when they could not get any more land there. These railroad lands of which he speaks, are within four or five miles of where his place is in section 6, township 5 south, range 3 east, and it is hard to say what these railroad lands in their present condition, the best of them would be worth—the value of the timber as well as the land. He thinks there are lots of people who would pay $20 an acre for some of it. There is a market for the timber off of these railroad quarters that have timber on them. This market would be at Hult's sawmill at Colton and at Mulino, and the Schafer Lumber Company at Meadowbrook. These three mills could

buy. There has been a mill down near Canby, the Adkins sawmill, but that is sold, and they have quit running logs on Mill creek. In fact, they could not get any more, about all is tied up in the railroad land. They could not get them. These mills would have to stop running unless they could buy timber from somebody. The Hults mill has some outside timber situated along Mill Creek. Some is all felled, piled, and ready to put in the creek on the half of section 6, in the same section in which he is. The timber is just normal, and they pay stumpage for this timber around about a dollar a thousand. They leave the land with lots of trees that are too small for logs, lots of them are rotten and doty, and occasionally a white fir or hemlock that is not merchantable timber, and lots of underbrush. They cut these large trees above the pitch in the stump, which runs all the way from three feet to probably ten feet, and they use a spring board on the big ones; on the small ones, two or three feet in diameter at the butt, they cut without the spring board. These forties are good for that country, or the average for that country, and would average perhaps four hundred thousand feet. He does not know how much per acre the best of it would run, but he has in mind one eighty from which they have taken two million feet in that neighborhood, in section 12, township 5 south, range 2 east, which would be about a mile south and a mile west of section 6 in which he is. There has been a pretty good market for timber there. If he were to buy one of these quarter sections that had a stand on it of 400,000 feet to the forty, or 1,600,000 feet to the quarter section,

or 2,000,000 feet board measure to an eighty, the first thing that he would do to get his money out of it and make it profitable, would be to try to sell the timber. Whether he could sell the timber for a dollar a thousand stumpage would depend a good deal on the location. He might get that, and he might get only 75 cents, depending on how close it is to a mill or creek or river. Most of these tracts of railroad lands there could be logged off and the logs sold to some of these mill people. If he had an eighty acres thus situated, that carried two million feet board measure of saw timber, and could sell it for a dollar a thousand, that would be about two thousand dollars for the eighty acres, and some of these quarter sections would be worth from two thousand dollars to four thousand dollars for the timber that is on it, that is the best ones. If the company should sell a quarter to him as an actual settler at $2.50 an acre, he would get today two or three times his money back, or five times his money back out of the timber, but if he had bought the land seven or eight years ago, he would not. There was no market for timber seven or eight years ago. The market for timber lands first came to his knowledge about the time he bought his piece of the company in 1900. The character of the market for timber since that time has been improving all the time. Twenty years ago these timber lands were worth from $2.50 to $5.00 an acre, depending on location, for agricultural purposes, that is a man would go in there and buy the land and clear it a few acres each year. The percentage of agricultural land would average better than 25 per cent; the poorer

ones would run about 25 per cent; some would run much better. He knows of homesteads taken around in that section there in this timber land. There is the old White homestead and the Beasom homestead. The White homestead is in section 7, and the Beasom homestead in section 6-9, but he does not know how long ago they were taken, but quite a number of years before he came to the country. This timber about which he spoke as just felled and ready to put in the creek, is off of the Beasom homestead—these two million feet. The homestead was 160 acres. They live on that place there and have a farm. He could only guess how long that homestead was there before he came to the country, but it was long before he came. There are donation land claims right up next to these homesteads, and there are donation claims further up in the mountains than this, still beyond this, on the streams. He is a man of family, and he has not worked in the sawmill or in any other business outside since he has been living on his land. He went on to his place to live in February, 1909, three years ago. The reason he did not go on the place before that was that he had to work and make money to pay for it. He could make a living on the place and pay for it after he had a house built and the slashing done and the grass started to grow, but naturally a man has to have money to invest in any business. Take the land in a state of nature with no money, he could not do anything, and no one could. A man would have to have a little money to clean up a little and get started. That is, he had to go and work out and get some money to pay for his place and to help

improve it before he could go on it to live.

Whereupon on redirect examination witness testified that that big burn is just above him to the east. This section is about the edge of the big burn. That is the reason the timber there is in patches. It is in the edge of the big burn, and the edge is irregular. Take some quarters in this burned area and 50 per cent of them would be easily cleared. Other forties there would be very little burned—they vary. He is more or less acquainted with this area in this big burn, which is located around Colton. Colton is two and a half miles east of him, and is the present post office. He thinks Colton is marked on Defendants' Exhibit 259. What is known as old Colton would be about five miles away. The post office is changed here now—pointing to a place just above James, which is at about the corner of sections 3 and 4, township 5 south, range 3 east, on the line between sections 3 and 4, township 5 south, range 3 east. He would say that that burn with reference to that, runs off northeast and then comes off from Colton and runs up on a big hill. He has never been up on the top of the hill, and does not know what section it is in. It would run up there five or six miles or more, maybe ten miles up on the hillside, up on the mountain in section 2, township 5, up to about 4 east. There is a lot of good farm land there. The eastern portion of it is on the side of a mountain—it is poor land but will do for grazing, but not for farming. The remainder of the land other than the plow land of these 160-acre tracts, would make good grazing land. There is a creamery at Molalla, and the dairying industry is thriving in

that community. They have started a corporation at Colton, and a year or two, as soon as they get more capital, they are going to start a creamery there locally. That is a good dairying country, and dairying has been one of the leading industries on the farm.

Whereupon E. E. QUICK, called as a witness on behalf of complainant, being duly sworn, testified that he lives at St. Helens, Columbia County, Oregon, and is fifty-nine years old, and has lived in Oregon since 1862. His father first settled in Washington County on what is known as Chehalem Mountain, and witness has lived in Washington and Columbia counties ever since. He does not actually know in what township and range he lived in Washington County. They lived on what is called East Dairy creek. He was a young man at that time and did not pay much attention to that. They moved from Chehalem Mountain to East Dairy. They lived about two years in Chehalem, and the remainder of the time on East Dairy creek for about seventeen years, until 1880, and then he moved to St. Helens, Columbia County, Oregon. He was married about that time and removed to Columbia County, where he has lived ever since. His first official position in that county was that of county school superintendent; afterwards county clerk, and he has been county treasurer. He holds no official position at the present time. He has been in the abstract business for about seventeen or eighteen years, and has township plats and everything of the different localities of the county, and has traveled and been over different sections of it; often goes

out hunting and fishing, things like that, through different sections of the county, and this abstract business has brought him in touch with the general history of the development of that county, and he thinks he is acquainted with the general character of the soil and the lay of the land. He is acquainted in a general way with the lands in the townships in which the railroad lands involved in this suit are situated in Columbia County, and particularly in township 4 north, 2 and 3 west; 3 north, 2 west; and more particularly 3 north, 3 west. He also knows some in township 5 north, 2 and 3 west. He has been over these lands to some extent, out through that section of the country different times, over the county roads and on to some of the lands. One might say from his knowledge of the abstract business that he is more or less familiarly acquainted with all the entire county, that is, different portions of the county. He lived on a homestead there himself, which he took up in 1884, and which is in township 4 north, range 1 west. He lived on his homestead there about four years, made it his home and cultivated it, and was able to make a living off that land. He was elected county clerk in 1888 and left it on that account, but his family lived on the place until he made final proof. He commuted the homestead and made final proof before his family left the place. He then moved into St. Helens, but he owned the place for a number of years after that. He cleared up quite a good deal of it while he owned it, probably forty acres of it is cleared, and possibly sixty odd acres of it slashed and fenced. He fenced the entire 160 acres. By

slashing, he means that he cut down the large timber and the small timber, cut the small timber and brush first, and then felled down or cut down the large timber and burned it, and seeded that to pasture. He left the stumps in the ground, that is, in slashing. He removed the stumps from the forty acres that he cleared. There were probably three or four acres of a swale in one place of small ash timber on that land. He included in that quite a little bunch of fir and cedar, which was pretty thick. The cedars and firs ran from two feet to three and four feet in diameter. The entire place was covered with timber. There were three or four acres of swale that had ash trees on it, and the balance of the land was fir and cedar. Some of it was merchantable saw timber. He sold some of the timber to a mill, some of the standing timber, but that was after he had made final proof on the place and got his patent. He sold it to a mill company and they logged off part of it. He had made quite a slashing before they had done anything. The timber that he felled and burned was much the same in character as that which he afterwards sold. In the early days there was no market for the timber. They did not consider it of any great value at that time. The practical method of making use of the land for agricultural purposes throughout his whole neighborhood and country there, was to clear the land up and get it into cultivation. Nearly all of the railroad lands involved in this suit in Columbia County are in the townships with which he is particularly well acquainted. In other townships there are only a few acres in each township, with the exception

of one township where there are two sections of railroad lands. In his opinion, there is about 70 to 80 per cent of that land in these townships with which he is acquainted, speaking now with reference to the land generally as a whole, and including the railroad lands, that can be used for agricultural purposes when the timber is removed, and he thinks it would be a good investment for a farmer to pay for the removing of the timber and the clearing of the land for agricultural and horticultural use.

Q. In your judgment, basing your knowledge, or basing your answer upon your knowledge as to the general character of the soil and lay of the land, the difficulties that would confront the settler in the way of clearing the land and preparing it for use—in your judgment, could a settler maintain himself and his family on one of those quarter sections of railroad land within those townships?

A. Well, if he is a man without any means, the first year possibly he might not do that; but when he had cleared up two or three acres of land, why, he certainly could do it, I believe.

Q. After he got started in the way that you have described, what would be the practical thing for him to do with reference to extending his clearing, if anything? That is, I mean now in your own language describe in a general way how a settler should go about it, after he went upon the land, to put it into cultivation and get the best use of the land for agricultural and horticultural purposes?

A. Well, of course, he would have to build his house and get some place to live to begin with. Then he would go to clearing the land and putting it in vegetables and things of that kind, small tracts at first, and afterwards sowing grass and planting out fruit trees; and fruits of all kinds grow well in that section of the country, in part of that section of the country; and grass and things of that kind grow well.

Q. Well, now, that is what I meant before when I said agricultural and horticultural use.

A. Yes.

Q. You limited your answer to agricultural use.

A. Yes.

Whereupon witness testified that apples do well in there, especially Northern Spy apples do fine; pears do well; cherries do quite well; strawberries grow excellent, they have excellent crops of strawberries anywhere in that section of the country, out where this land is located, amongst people who are living in that vicinity; loganberries, blackberries, raspberries, and in fact all kinds of small fruits; and prunes do as well as apples and pears. They cannot raise any peaches in there. Clover does well on that hill land—clover and orchard grass. Timothy does not grow so well on the upland as it does on the bottom land, but orchard grass and clover grow well on that upland, which they call the hill land. It is all good for fruit and vegetables. The climate is favorable for these different kinds of vegetable growth that he has mentioned. It would probably be unpleasant

for the purposes of a home in some instances, because rather isolated, and because there are not a great many settlers through there. But about eight miles from St. Helens, out in township 5 north, 2 west, is what is called the Western Cooperage plant, where they bought up a number of homesteads in there; and people have proved up and made final proof on their homesteads; they have a splendid school, a little store and postoffice, and they are selling that land in there that they bought from those settlers, after getting the bolt timber—they were in the stave business, after getting the bolts and stuff of that kind, they were selling that land at $60 or $70 per acre, about seven or eight miles west of the river; that is, after getting the bolt timber. That is, they were in the stave bolt business, and they cut out the yellow fir. They are barrel manufacturers. He supposes that their business took out 75 or 80 per cent of the timber. It is clear stuff that they use principally, and it possibly might not go that much. That would leave plenty of fir for home use or anything of that kind, and the balance of the land in stumps. They have been selling that from $60 to $70 an acre, some of it, but some of it had been cleared by these settlers, had been cleared up and farmed for a number of years, and they are selling that land at about $70 an acre. The purchasers are making little homes of it in ten, fifteen or twenty acre tracts, and are living there. These tracts are cleared, and are large enough to maintain a family. He is familiar in a general way with the manner in which the railroad lands have been handled in that vicinity, as to being sold or withheld

from sale.

Q. I will ask you whether, in your opinion, the manner in which the railroad company has sold the lands or withheld them from sale has retarded or promoted the development and settlement of that country?

A. I would say that it had retarded the development and settlement of the country.

Q. Well, substantially or otherwise?

A. Well, I should say substantially.

Q. I will ask you to state whether, in your judgment, if the lands that we have been referring to as railroad lands in those townships that you have referred to and which are involved in this suit, had been disposed of to settlers, or should be disposed of to settlers now, would that territory or would it not become settled and populated by settlers?

A. I think it would.

Q. You said, in answer to a former question of mine as to whether it would be a pleasant place for a home, that some places would be isolated. Would that condition be the same if these railroad lands should be turned over to settlers?

A. No, sir.

Q. I will ask you whether, in your judgment, the withholding of the railroad lands from settlement has had any effect upon the settlement of the intervening even numbered sections?

A. Well, I would think it would have had some effect on it, possibly.

Q. How, with reference to the establishment of roads and schools. What effect has the withholding of these lands from settlement had in that respect?

A. Well, it has not tended to development or building of roads and schools, farther than what it has contributed in tax. The railroad company are probably taxed for the land. They might have used the tax on the roads to some extent.

Q. Do you know, as former school superintendent, that a certain number of pupils are required in order to establish a school and maintain one?

A. Yes, sir.

Q. Now, are you familiar with any of the other parts of Columbia County that are similar to that part of Columbia County where the railroad lands are situated?

A. Yes, sir.

Q. Do you know of similar lands being settled upon in the other parts of the county?

A. Yes, sir. Take the Nehalem Valley, for instance; that is in Columbia County—quite a good deal of the Nehalem Valley. That was heavy timbered lands, and it has been settled up along the river and on the hills. There they have established schools and built roads, and have some of them made some good farms—especially in the bottom lands, where the clearing possibly would

not be so heavy. There would be some tracts, maybe, the timber would be scattering on the bottom; but the hill land is heavily covered with timber, and they have good schools and good roads in that Nehalem Valley.

Q. Do you know of any instances where the lands adjoining the railroad lands involved in this suit are in the possession of settlers and being used for the purpose of settlement?

A. I can call to mind just at this time about one place owned by Mr. Grand. If I remember rightly, he is really on a railroad section. And he is making a good living there on the place. It is on Scappoose Creek, and of course he has some little bottom land, but most of his land has been timbered hill land.

Q. You mean it was formerly a railroad section?

A. I think it was, if I remember correctly about it.

Q. That the company had sold?

A. Yes.

Q. You don't mean it is land involved in this suit?

A. There has been a few tracts sold by the railroad company in early days up in the vicinity of Scappoose.

Q. But that is not the land involved in this suit that that man lives on?

A. No; but it is adjoining the railroad land, other railroad land.

Q. Now, these instances where you know of the land being cleared of heavy timber, either by slashing, as

you have described it, or fully cleared by removal of the stumps, are they of rare occurrence, or are they of frequent enough occurrence so as to indicate that the same could be done as to the other lands?

A. I would say they were frequent enough to say that could be done with other lands.

Q. At the present time the settler would not have to burn the timber? It could be sold, couldn't it?

A. Why, in a great many instances, I believe it could be sold, anywhere near any of the logging camps. You see, in that county, there is a number of railroads running out into the logs, into the timber.

Q. You mean logging roads?

A. Logging roads; and anywhere in the vicinity of these roads, the timber could be sold to those logging camps.

Whereupon witness testified that most of these logging roads run down to the Columbia River, he thinks all of them run down to the Columbia River so that the logs could either be disposed of at the mills along the Columbia there, or towed in the Columbia to some market. The price of this land after it is cleared and put into shape for cultivation, speaking in a general way, depends somewhat on its proximity to the front. What he means by the the front is near the river or railroad. Land within six or eight miles, as he has before stated, is worth fifty or sixty dollars an acre after it is cleared of stumps. Of course nearer the front, one can scarcely

buy any cleared land for less than $100 or $150 an acre down his way. Further back it might possibly not be worth so much as that. His answer includes the slopes as well as the low level lands. The river runs almost north along opposite St. Helens, as shown on this map, Defendants' Exhibit 259, and these railroad lands that he has been referring to, are shown on the map, most of them, as in townships 3 and 4 north, ranges 2 and 3 west, and they extend from the river five or six to ten or twelve miles. Most of these railroad lands are pretty heavily timbered. Some of it he would consider good saw timber. His recollection is, that the stumpage, generally speaking, in there, is assessed at about two dollars a thousand. He does not think there would be any doubt of the ability of a settler to clear the land and make a home if he had the benefit of that timber, if he was anywhere near those logging roads to dispose of it. He might have a tract too far away, that he could not dispose of it. That is, he could not give assurance that his answer would apply to each individual quarter section. He does not think it would in every instance require 160 acres of that land to maintain a settler and his family, with the possibility of raising small fruit and vegetables and things in that section of the country. He could make a living on ten acres provided he had it in small fruits and things of that kind when that country is ultimately cleared and settled up, because he could get a market for it, and would raise enough on ten acres to support an ordinary family. He cannot say exactly that he knows where the McLaffertys and a number of oth-

ers represented by Mr. Lafferty, made what they claim to be settlements in there, and made application to purchase land from the railroad company; he cannot say that he knows exactly where those lands are situated. He does not think he has been up in there on those lands. He has not been there within the past four or five years, but he does not mean to qualify his former testimony that he is acquainted with that general territory. He has been over that territory quite a good deal, but not since this controversy arose.

Whereupon on cross examination witness testified that he sold the timber on his homestead in 1889, he thinks, to Wickstrom & Howard, and received a dollar a thousand for the fir and cedar, and did not realize over $500. These people to whom he sold were men that owned a little mill built on the corner of his homestead. If he had kept that timber until now, he could easily have gotten two dollars a thousand for it, and he thinks two dollars a thousand is the usual market price of stumpage reasonably accessible to logging roads or some means of transportation. The Chapman Timber Company has been buying quite a good deal of stumpage in there, and the Benson Lumber Company, the Nehalem Investment Company, and the Lamb Company, and several other companies have been buying timber lands through there. In fact, he has made a number of abstracts for the Benson Lumber Company and all of those companies. He refers to S. Benson, and he knew him well when he drove a yoke of oxen into St. Helens. He has made his money in timber lands and logging, a great deal of

it in Columbia County, and in buying timber lands and stumpage in Columbia County. He knows that Benson is interested in building in Portland.

Q. Now, suppose that these Lafferty people, who have attempted to buy this land from the railroad company, or made applications to buy it, at $2.50 an acre, should get a deed from the railroad company and a good title at $2.50 an acre, what would they be able to do with the best quarter section of timber that is situated in that group of claims or quarter sections that these clients of Mr. Lafferty have applied for? What would they be able to do with that quarter section—what could they sell it for?

A. Well, if it was accessible to any of these railroads, they could sell it for possibly two dollars a thousand.

Q. What would be the stumpage? I mean what would be the quantity of merchantable logging timber that the best quarter section of this land would carry—about how many million feet, board measure?

A. Well, I think there is tracts out there in that section of the country that will go six million to the quarter section. That is an exceptionally good one, though.

Q. What would they average, the timber land?

A. Well, take it all the way through, they would average probably three million.

Q. Now, if they averaged—if the best one brought six million——

A. That might be too large, but I am not certain about that.

Q. You are reasonably familiar though with the timber lands of Columbia County and the contents of these quarter sections?

A. Yes, sir. I have worked in the timber quite a good deal.

Q. And you have been in the abstract business, and in a general way have knowledge of what these timber companies are paying for these quarter sections?

A. Yes, sir.

Q. And other tracts?

A. Yes, sir.

Whereupon witness testified that the market for timber land has been pretty active for the last five years in Columbia County. These people of whom he speaks, like the Chapman Timber Company, are large concerns, buying a large acreage for the timber. If a quarter section had six million feet board measure on it, and one could get two dollars a thousand, that would be twelve thousand dollars for a quarter section. It would be pretty hard to say what would become of these timber quarters of Mr. Lafferty's clients if they got this title, that is, what would be done with them. They might sell the timber and reserve the land. If the lands were in close proximity to those of the Chapman Timber Company and these other large companies, they would probably be transferred to these large companies, and he

would say that it is probably the case in his county that substantially all the homesteads and cash entries and timber entries and entries under the timber and stone act, where they carry valuable timber, would probably be transferred to these large companies. He knows of a number of homesteads and pre-emption claims that were sold to these timber men. In nearly all instances the companies buy the title as well as the timber. There are a few instances where the land has been reserved. That is, there are a few instances next to the Columbia River, within four or five miles, where the owner of land wants to reserve the land and has some timber, and he sells the stumpage, as he did with his. He does not own his homestead now. He sold it about 1898 to William Skuzie, who is himself not living on the place but his son and son-in-law have divided the place between them and have been living there all the time. He would not say that all of these timber lands shown on Defendants' Exhibit 259 are within six to fifteen miles of the Columbia, there may be others beyond that. It would be about fifteen miles from St. Helens to the farthest railroad land. These railroad lands are on different elevations, and will range from eight to six hundred feet up to twelve or fourteen hundred feet, the highest point. These lands are in what one would suppose would be called the Coast Range, a part of the Coast Range. They are more or less rough, some of them, and some of them are gradual slopes; quite a good deal of that land is a kind of gradual slope. According to that map, Defendants' Exhibit 259, all of that land came to the company under

the grant of May 4, 1870, and the yellow field follows along north from Hillsboro about ten or twelve miles, almost in a body clear across that part of Columbia and Washington counties within the limits of this grant, with no railroad land either sold or unsold in that territory; that is, if that map is correct. He thinks the majority of these lands in yellow along the Columbia River, on both sides of it extended to a point three or four miles west of Yankton, with no railroad land either sold or unsold of any consequence in that territory, except a little over in Clarke County, Washington, if the map is correct. He supposes that Holbrook is in the area shown on this map on the Astoria road, just below where the United Railways turns out at Burlington in Washington County. Holbrook is just built down the river on the slough. Most all of this unsold railroad land in green is hill land, and there are some large burns in there, which was heavily timbered until these burns. There might be a section burned there. He could not say if any of Lafferty's clients have made applications on any of these burns, or that any one has made application to purchase any of these burns. He does not know who has made application, and who has not. Some of the burned land is owned by men that have taken up homesteads. There are a few settlements out there on the burned even sections, but there is very little. There are not over four or five claims in the burn. Most of them are homesteads; in fact they were all at the beginning homesteads. There is some dead timber, and a few cedars possibly, left on these homesteads. That burned

area is about ten miles away from St. Helens, near what they call Bunker Hill. It is pretty hard to say how many saw mills there are in Columbia County. There are two at St. Helens, one at Scappoose and five or six at Rainier, four or five at Clatskanie, besides one or two other country mills probably. He could not tell exactly how many there are. These saw mills are not all on the Columbia River. The mill at Scappoose is out near this railroad land, out towards up Scappoose Creek, toward the Chapman Timber Company, which has a logging road from that down to the S. P. & S., which crosses the railroad. Mills at Clatskanie are off the river a little ways, some of those mills are off the river. There is a Westport slough in Columbia County out of which logs are rafted to Portland. The Benson Logging Company logs in the Westport slough, or did log there, and he thinks Benson sold to Portland, and also rafted to San Francisco. He thinks St. Helens has about a thousand population now. Rainier is supposed to have the greatest population of any town in Columbia County—Rainier or Clatskanie. Rainier has about 1359 population, according to the census of 1910, and the population of the county in 1910 of 10,580, has increased some; he would think it has increased ten per cent in two years. St. Helens is about twenty-seven miles from Portland by rail. Goble is twelve miles below St. Helens, in Columbia County. The Northern Pacific Railway Company built and operated its trains across the river at Goble, from Puget Sound to Portland about 1883, and it has been in operation up until the bridge

was built at Vancouver about two years ago. The Astoria & Columbia River Railroad, operating from Portland to Astoria, does not touch St. Helens. This road has been there twelve years at least, and the Northern Pacific operated all of its trains by way of Goble, across the Columbia River, between Puget Sound and Portland, until the bridge was built by it across the Columbia at Vancouver in the last three or four years. The Astoria & Columbia River Railroad Company has been operating trains between Portland and Astoria, through Rainier and a little west of St. Helens daily, and sometimes three or four trains a day, for the last ten or twelve years. Speaking of these lands as being agricultural, he means after the timber has been removed.

Whereupon, on redirect examination, witness testified that he thinks A. B. Hammond was instrumental in building this railroad from Portland to Astoria, and that he held it some time before he disposed of to the Northern Pacific Railway Company, and it did not become the factor that it is today until after it became a part of the Northern Pacific Railway System. His recollection is that the Northern Pacific Railroad was built by the Northern Pacific in 1883, and the road between Portland and Astoria did not become a part of the Northern Pacific Railway System until something like 1904 or 1905.

Q. Now, Mr. Quick, you said that if these lands were sold at $2.50 an acre to settlers, there would be a market for the lands by the demand for them on the

part of those large timber companies, and that those who purchased them from the railroad company could sell them to the large timber companies if they desired to?

A. That is for the timber, yes.

Q. Well, now, would it be necessary for a man who bought those lands, desiring to make a home on them, to do that?

A. No, it would not be absolutely necessary for him to do that.

Q. Of course, a man, after he had cleared it up and made a nice home of it, he could still sell it, if he wanted to get the money out of it, the same as you did with yours?

A. Yes, sir.

Q. That is true, isn't it?

A. That is true.

Q. Well, do you mean to testify that, if these lands should be sold by the railroad company to settlers, they would necessarily be passed on by the settlers to large timber companies?

A. No, sir; not necessarily. Taking that as a supposition, it could be done, you see, if they wanted to.

Q. In your judgement, do you think that they could sell the timber and retain the land, if they wished to?

A. Well, they do in some instances sell the timber

and retain a portion of the land; not all of it, but a little home, or something that way. But generally speaking, the timber company wants the whole title when they buy. I mean the timber company in buying would want the whole title. That has been the custom on nearly all the land that was bought in Columbia County.

Q. That is true largely because, where the timber is sold on a stumpage basis it has to be removed within a specified time?

A. Yes.

Q. Whereas if the timber company buys the land itself, it can hold the land indefinitely?

A. Certainly.

Q. And has no restriction as to the time that it must remove the timber. It that it?

A. Yes, sir. That is right.

Q. But do you know whether in these railroad sections concerning which you have testified, a settler could not find a market for the timber if he desired to sell the timber and retain the land?

A. Just read that question.

A. No.

Q. That would be a matter for future development of the market?

A. Yes. It would, yes.

Whereupon C. F. CARTER, called as a witness on behalf of complainant, being duly sworn, testified that

he lives at present at Gold Hill, in Jackson County, Oregon. He is forty-four years old, and has lived in Oregon about thirty-two years, most of the time in the meadows of Evans Creek. His father lived in Jackson County since about 1880. He lived right in there in the meadows all the time but about two years, referring to a place named Meadows of Evans Creek, that is what they called it when they went in there. His father lived in section 21, township 34 south, range 2 west, for about nineteen or twenty years. He went on there when witness was about fifteen years, about 1883, something like that. His father had a tract of eighty acres. When his father went on it the land was pretty well covered with brush—some little timber. His principal business when he lived on that place was farming that eighty-acre tract. He did not own the eighty acres. The railroad company was supposed to own it. His father never got title to it. He could not say whether he ever made an application to the railroad company to buy it. The company was not selling the land but had taken it off the market. The company was not selling, because the land was off the market. He does not know whether his father ever actually made application for it. His father left the land because he could not get title to it. His father had a family. This land was principally plow land—most of it good farming land. They were near Medford, Central Point and Gold Hill. They were all near about the same, and Spikenard is in the same township, or at least he supposes it is. It is in township 34 south, range 2 west. The general character of the land in that locality

is rather hilly, and level spots around on it, and springs, and the like of that. There were settlers in the vicinity of his father's place. The land was hilly and mountainous, with fields on it, little fields around on it. There are about ten or eleven settlers who live within a radius of seven or eight miles of his father's place. They had pretty good little mountain ranches and were making a living on it. These ranches were built on the mountains. One of them was right pretty nearly on the divide. He has been over a good deal of that country there, all around in the mountains there. He used to hunt in there quite a little, and that was the same general character as this land that was settled on there. Settlers were interspersed through this mountain country.

Whereupon, on cross examination, witness testified that he could not give the description of this eighty of railroad land which his father lived on, by legal subdivisions. It was in section 21, township 34 south, range 2 west; quite a ways from Wimer, and about half a mile from that fork of Evans Creek which runs up through the Meadows. Meadows was like a little meadow in an early day, and the place called "The Meadows" covers several sections. It is over eighteen miles on Evans Creek up from Woodville, but he does not know the exact distance. The country down on Evans Creek is a fine little valley there, but it is different land up there where his father lived. Down on Evans Creek is bottom land, and this that he refers to is not. Woodville is at the mouth of Evans Creek, and is about eighteen or twenty miles distant from his father's place. It is not

level country all the way up there. That country is up quite a little ways, and then it is not level, then opens out into the Meadows again. It is a fact that the country on Evans Creek, the farm land on Evans Creek, is of the same general character as the farming land up around Central Point in Jackson County. It may be some of it just as good, but it is not the same character of land, all of it. There is a whole lot of difference between one land and another, one is made land and the other is not. A lot of that land over about Central Point and Medford is made land along the creek bottom. Central Point is on the railroad and on land that has been there for many years, and Central Point has been a town since the railroad was constructed through there in 1884 or 1885. Gold Hill is about nine miles from the mouth of Evans Creek, and Wimer is on Evans Creek. He cannot tell how far his father's place was from Wimer. He has been down through there. He cannot tell how long a stream Evans Creek is. His father went on to this piece of railroad land in 1883, and lived there about nineteen or twenty years, during which time he did not have any title and he did not pay for the land. He does not know whether he applied to purchase it or not. He said the land was taken off the market was the reason his father did not get it, but he could not tell exactly when it was taken off the market. He does not know that it was not taken off the market until 1903, but he knows that it was taken off before 1903 because he has been gone from there since that. It was taken off while witness was on there, and he left before

that. His father died about 1903. Witness did not apply to purchase this land because the company had taken it off the market. He knows it was taken off of the market because he heard that it was taken off. He did not write to the company or any of its employes to find out. His father stayed on the land until he died. Witness moved away from there just about that time. His father did not die on the premises, but he had moved off of it. He farmed that place there about nineteen or twenty years, and had about twenty-five acres in cultivation. They had some hill land on it. There was about sixty acres of that could be plowed—sixty acres of the eighty, after the timber and brush was taken off. They could not plow it with the timber and brush on it. There was more brush than there were fir trees.

Q. Now, you want the court to understand that this unsold railroad land within those two or three townships surrounding this eighty is about the same character as this eighty acres that your father lived on for about twenty years, and didn't buy or pay anything for?

A. No, sir.

Q. Well, what is the fact about that?

A. Well, the facts is what I told you a little bit ago, told this man about the character of the land—these other people that was up on the mountain sides.

Whereupon witness testified that he never cruised any of these unsold lands of the railroad company. Some of these unsold railroad lands may be timber lands, and some might not be. There are places there a man could

settle on and make a little home out of it. They have timber. There are not many sections in there that has not got a little timber on it. There is one saw mill up the hillside further on Evans Creek. Kesterson and Silsby's saw mill is away down below—just how far he could not tell, but it is quite a little ways. He could not tell where their saw mill is, but it is on Evans Creek, that is, they had one in there. He does not know where they have a mill now. He could not tell anything about the saw timber below there, because he was only along the road down there—he never had anything to do with land in there. All he is speaking about is right up there, close to where he lives. All that he knows about that that is back in the hills, he has been over there hunting.

Whereupon D. P. CALDWELL, called as a witness on behalf of complainant, being duly sworn testified that he is fifty-one years old, and resides at Walker, Lane County, Oregon. He was born in Iowa and came to Walker in the year 1890, and has made that place his home. He has not been there all the time. He lived there most of his time for more than fifteen years, and has been engaged in farming in Oregon. Prior to coming to Oregon he was engaged in farming and as a laborer. Examining Defendants' Exhibit 259, witness testified that he was acquainted with the lands in township 20 south, ranges 3 and 4 west, and in township 19, which would be north of him. He is pretty well acquainted all over three or four townships in the country there around about six to eight or ten miles in any direction from Walker, and is acquainted with the coun-

try of which he speaks, and knows better by the names than he can tell by the map. He has been to Wendling, but he is not acquainted with the lands through there, he only just went up the Mohawk Valley and back. This yellow field running clear through to the end of the map or the side of the map is the wagon road grant there. That would be south and east from Eugene, and he has been up through the Pleasant Hill country and south of the Pleasant Hill country he has been on the Coast Fork of the Willamette; he has been through that country and through the hill country there. He has been up in that country from the Oregon & Southeastern Railroad; north of that railroad that runs east from Cottage Grove. He has been over those hills towards Bear Creek, and through to Pleasant Hill. He does not know the country so well by the number of sections and ranges as he does by observation. He knows it better by creeks and towns. He has been on Lost Creek and through that section of the country. Always when he was in the hills he observed what was around him, took notice of the timber and the land. He had a homestead in township 19 south, range 4 west, in section 25, but did not prove up on it. He lived there about three years, a little more. It was very good land. There was timber on the land, and open places; kind of bench land formation, that is, for grade. He farmed it in the way new settlers generally farm such land and he knows what a settler has to buck up against when he starts it. He knows what they have to contend with. He had to build a road about three-quarters of a mile to get to it.

He left his homestead on account of sickness; he was advised to take his wife and family away; and to get to send his children to school, young children. He has three children. He made his living on his homestead while he was there.

Q. Now, from your observation of this land that you have been over, railroad land and land in the vicinity of the railroad land, what percentage of 160-acre tracts by contiguous 40-acre subdivisions, but not by quarter sections, would furnish support for a family if the settler would go on that land?

A. What percentage?

Q. Of the 160-acre tracts would support a family, to move on there as a settler?

A. I don't know as I just understand the question. That is, what percentage of the 160 acres would it take to support a family?

A. No, that is not the question, Mr. Caldwell. About how many of these 160-acre tracts, described the way I have in my previous question, could a man go on with his family and make a living on, as a settler on them?

A. Well, he can make a living on any of them that I have seen.

Q. Would there be sufficient plow land to raise the hay and grain and vegetables that he would need?

A. Yes, sir.

Whereupon witness testified that there was railroad land on two sides of him in the vicinity of his homestead.

There were three quarter sections right around him where he was. They were, if anything, better than the quarter section that he took, because he was up higher in the mountains. About the first thing a settler starting out on one of these 160-acre tracts would have to do, would be to make a road to get there, and the next thing he would have to do would be to cut off the brush, build him a house and move in, and haul in enough supplies to last him about a year, and then go to slashing brush and burning it, and seed it down in wheat and grasses, and get his cows accustomed to the place, and go to making a living. In his experience, lands had been cleared and put in cultivation in that vicinity, he helped to clear land in the territory with which he is acquainted, of which he speaks. The character of the land that he cleared was rolling, had timber and brush on it; some of it pretty steep grade. He has helped to clear land that was steep enough that they would let the horses rest after it was cleared, going up the hill two or three times maybe. The horses needed rest drawing discs or weeders or anything. He helped the orchard company clear off some land a year ago last June that this summer he helped cultivate, and he would let his team rest two or three times going up the hills. In the hill land there, in the two or three townships with which he is mostly acquainted, he thinks that they could, according to what land he has worked over, farm about eighty per cent of it; about eighty per cent of it could be put under the plow.

Whereupon on cross examination witness testified

that he means by agricultural or plow land that it could be plowed after the timber and brush had been removed; that is to say, probably twenty per cent would be too steep or too rocky to plow. He does not know whether this homestead that he took in section 25, township 19 south, range 4 west, upon which he lived for three years, had been homesteaded before he took it up. The man that located him upon it said that it had been entered before, he told him that it had been—the entry had been cancelled some time. That is to say, he thinks it was lost to the railroad grant because it had been settled upon or entered prior to the time the railroad grant was made. That was the way he understood it, and then it had been abandoned and he found it, or the man that located him found it as vacant land. Before the grant became effective it had been taken and then abandoned, that was the way he was told about it and the way he understood it. He does not know what has become of it since he abandoned it. He does not know how the title is, or whether it is public land now or not. There was a man who bought some of his stuff that he had on there, but there is no one living on that land now. There might have been some good saw timber on this 160 acres of his, but not very much. Some of it was pretty rough, and he could have cleared some of it, and did clear and raise hay. He did not clear very many acres free from stumps, probably not more than two acres, but mowed over about twelve acres of hay. He does not think more than two acres were cleared free from stumps, and he would say that he slashed and burned besides the two

acres about twelve acres. He had cows while he was living there with his wife and three children, and these cows roamed outside and pastured over the railroad land wherever they wanted to go. He had three cows to milk, and several calves and yearlings, something like that, but he did not go into the stock business particularly. These cows helped to make his family living. He did not keep hogs, he thinks he had only one hog on the place. He did not keep any goats, but had three or four horses, but did not raise horses for sale, nor sell any grain or fruit off his place. He sold some vegetables, some onions, potatoes, lettuce and such stuff. He does not know how much he would sell any one year. They would, when they would go down, take a little stuff out of the ground. Just like one would take a marketing of eggs. They took eggs, too, and some chickens. He raised feed and chickens and a little butter to sell, and they would take whatever they had to spare. He presumes that he did not get over forty or fifty dollars a year out of that. When his wife got sick while they were living on the place, the doctor told him that he had better move away and he moved down to Cottage Grove, which is a pretty good town, but he does not know its population. That is the place where this railroad begins that leads out to Bohemia; he has not been out there on the railroad, but has been to Bohemia, out to the mines there. That is a good timber country, and there are a good many saw mills out on that road up in the timber. He has been once over to Wendling. Most of the time since he came to Oregon he has been

living at Walker, excepting the three years he was on his farm; he has been away from there some. He lived at Cottage Grove between three and four months. Since he left the homestead he has been farming and laboring, where he lives now at Walker, and he only has twelve acres at Walker; he rents land. Walker is his post-office, and the twelve acres of land which he owns is about a mile and a half from Walker, and the place that he rents is little more than two miles. These twelve acres that he owns was bought from the railroad company, but he does not know how long ago it was bought from the railroad company. It is a part of the old settled country. The land that he rents is in a railroad section. He is in section 5, township 20 south, range 3 west; that had been sold a good while ago by the railroad company, and of these twelve acres probably three acres in cultivation, and the balance—nine acres—are stumps and timber, logs. He has never worked in the cruising business, and but very little—a few days maybe—in a saw mill. During the time that he lived on his homestead, he did not go out and work for wages anywhere; he might have helped his neighbors, to exchange work, just swapping work among the farmers. He did not go out to work. He never went over any of these railroad lands in the three or four townships of which he has any knowledge, for the purpose of estimating any timber that was on the land. He knows where the Booth-Kelly Lumber Company's timber is at Saginaw, but he does not know how far their holdings go, but their mills are quite a ways, he would say five or six miles from the

railroad. That is pretty fine timber that the Booth-Kelly Lumber Company has in there, but he does not know how much timber to a forty they have—he has no knowledge of that.

Whereupon U. S. DIX, called as a witness on behalf of complainant, being duly sworn, testified that he lives at Colton, Clackamas County, Oregon, and was born in Missouri. He is forty-four years old, and was seven years old when his people moved to Oregon. They moved over in Washington County, lived near Glencoe, he thinks about four years, and then moved from Washington County into Clackamas County, Oregon; that was about thirty-three years ago. His father took a homestead in section 34, township 4 south, range 3 east, and died about 1898. He has lived on this homestead since he moved to Clackamas County. His father proved up and got a patent, and witness is living there now with his mother. His father's family, and since he died, the survivors of the family, have made their living on that place; spent all of their time on the farm; all the time excepting about two weeks in the fall, when he was running a threshing machine, threshing in that vicinity for others than on his own farm. He threshed over townships 4 and 5 south, range 3 east, and he is familiar in a general way with the development and settlement of that country, but does not know particularly of any railroad land in his vicinity. He has been around over the country there quite a little, but never paid any particular attention to any of the land. Looking at Defendants' Exhibit 266, witness says that he lives in sec-

tion 34 of that township there, and that the lands marked in black is railroad land. He has been around over township 5 quite a little, running around with the threshing machine, and he has never been up in the townships east of that, in range 4 east, and does not know anything about that in there; he does not hunt any. He has not been any further south than in the township south of township five, only in crossing it, as he is on the road going from his place to Gervais, and in that way he has been up in there a time or two and passed it in crossing; that is all he knows about it. He is not acquainted with that part of the country at all. Gervais is on the railroad, in the Willamette Valley, but he is not acquainted with that part of the country at all. Section 33, that joins his place on the west, averages up with his land and is just about the same thing as his land, and the land north of him in township 4 south, range 3 west, sections 29, 27, 25, 23 and 21, are just about the same as where he lives there, about the same all the way through there. That is true with reference to section 31. He does not know hardly what one would call the soil they have out there. It is burned over land; that is, a good share of it has been burned over, that is, burned over before the settlers went in there; there is quite a bit of it is what they call the burn; there are bodies of timber, too—some timber; the burns are in patches. Where they have done any clearing the timber has been burned and it is out in the open. They had to burn the old logs and stumps where they cleared—they had to burn them. Some of the timber was down—quite a lot

of it was down—when his father moved there. They had to burn the logs, the rotten logs and stumps. There is about somewhere around 25 acres in cultivation on this place that his father owned, at the present time. When the family first went there, his father made shingles to furnish the groceries until he got the land open enough so that it would make a living. After they got enough open so that they could make a living, they absolutely made their living on the land. He first commenced threshing in 1895, when they first got the machine, seventeen years ago, and he has been doing some of this threshing for his neighbors since that time, he has been threshing every year since that time. It would average about fifteen days each year. This year he thinks he threshed at about twenty-six or twenty-eight different places. He could make his living from his place independent of the threshing outfit.

Q. The bill of complaint in this case shows that in that township 4 south, range 3 east, the railroad company has, subject to the rights asserted by the Government in this case, lands in section 1 over 500 acres; section 3, 40 acres; section 5, over 200 acres; section 9, 40 acres; section 13, 280 acres; section 19, 47 acres; section 21, 200 acres; section 23, 280 acres; section 25, 200 acres; section 27, 320 acres; section 29, 120 acres; section 31, 240 acres, and in section 33, 120 acres. Now, in your judgment, does your general description of that land apply to these lands generally, or do you wish to make any exception as to any of these particular lands?

A. No, I think it would be general.

Q. What is your opinion as to whether a settler could go in there and settle upon these lands, and make a living for himself and family, on tracts as large as 160 acres?

A. Well, I think he could do it all right.

Q. Now, the other township that you are acquainted with. You say it is township 5 south of the one which you live in?

A. Yes.

Q. The bill of complaint in this case shows that there are in that township considerably over two thousand acres of land, commencing in section 1 and running through some of the odd numbered sections down to section 23. Is your general testimony with reference to the character of these lands and their susceptibility to settlement, does it apply generally to those lands?

A. I think it is all just about the same, as far as that goes, as near as I could make out.

Whereupon witness testified that there is quite a lot of that land in there that is occupied. Section 35 has four or five different families living on it; they just came in there a couple or three years ago. They are improving right along. As far as he has been around over other similar lands in these same townships in the possession of settlers, they are making a living on their land, those that have land there. He never applied to purchase any of these lands from the railroad company. He is still living on his place.

Whereupon on cross examination witness testified that he thinks his father entered this tract as a homestead about thirty-three years ago, when witness was about eleven years old. He went with his father on the place. There wasn't any of it cleared when they went there, and there was only a little shack built on there; he does not know who built it. It had been settled upon before his father entered it; there was a fellow who filed on it and built a shack there, but he does not know why he gave it up. He supposes he attempted to homestead it before his father did; he filed on it, but he does not know anything about that. The first entryman had just had a little spot around the shack there, probably a quarter of an acre or so, cleared. The shack was a little box house of rough lumber. He does not remember the man's name. His father filed a contest and succeeded in the contest, showing that the man had not complied with the homestead law by reason of settlement. He could not tell whether this man had any family or not. All he knows is that his father filed a contest against a man who had previously tried to enter the land under the homestead law, and his father was successful, and had a preference right of entry after the contest was decided in his favor, and he entered it as a homestead and lived there until he died. He did not pay anything for the land excepting the five years residence and cultivation. His father died October 15th, 1908, and had a family of seven children, of which he was the second. The children all left home but him. His brothers have a saw mill and his sister is married.

There are three brothers interested in the saw mill, the saw mill is twelve miles southeast of Oregon City. They get their timber for sawing off their neighbors. They did not take homesteads; they did not file on any lands at all. He has not taken a homestead and never tried to take a homestead out in that country. There were a lot of even sections that were public lands when he went out there with his father, but he was not old enough to take them. He was twenty-one about 1889, but there were no public lands to speak of there at that time, it had been taken up. As far as he knows the people were living on all the quarter sections in the even sections.

Q. I know, but that would make about four people to every section of this government land prior to 1889. Now, you don't mean to say that there were four families living on every even section in that country prior to the time you became of age so you could take some, do you?

A. Well, I don't know as to that.

Whereupon witness testified that he is about four or five miles south of Hyland, six miles east of Meadowbrook, a mile from Colton, northeast, and lives on Milk Creek, in the northeast quarter of section 34. There is a man by the name of Swanson who lives in section 33. He got his land from the Swedish Colonization Company, who got it from Mr. Jones. Jones had a lot of land there and some of it he got from the railroad company, and some he does not know how he got. He knows where Canyon Creek is. He notices on this map that

the green colors on these lands in there, different sections and parts of sections, and that the land colored green are unsold lands of the railroad company involved in this suit, and that colored blue is sold land, formerly railroad land, and not involved in this suit, and he notices the green is pretty scattering around him and around Colton where he lives, he thinks there is not very much railroad land left there compared with the whole section of the country. He notices the yellow field on this map, showing lands that the company did not get, but which went to people under the donation land law, or homesteads or pre-emptions, before the railroad company got its title, before the grant took effect. Most of that land west of him is in the yellow field. These lands on Mill Creek are not level little bottoms. Towards the upper end, it is just narrow bottoms and as one gets down further it widens out. He did his threshing in the country north, west and south of Colton; threshed in Hyland, but did not go in around Springwater, or far up as Schubel. He was out as far as Clark's, about six miles. He would think that he went over about twelve or fourteen miles square in threshing. Most of his threshing was done west, north and south of where he lived. They threshed over on Dickey's Prairie, just north of Molalla River. Dickey's Prairie would be off a little south and east on the north side of the Molalla River, the north Molalla River, in the Molalla bottom, which is pretty good farming country in there. He could not say as to whether that country on the Molalla River had been settled for fifty years, or whether it was do-

nation land claims in the early days. Once in awhile there are old farm houses. They mostly built new houses in there. What they call Dickey's Prairie, is an old settled country. He could not tell how many bushels of wheat he threshed in a season of fifteen days without his book. He threshed for so much a bushel, and they threshed about a thousand bushels a day this year. A dry ordinary season, other than like August just past, they would thresh fifteen hundred bushels a day if they got a good run, but they did not average a thousand this year. They threshed oats, too. They did not thresh oats or wheat up in this country east of where he lives, not in the mountains. He would say that when these lands were cleared and grubbed of timber two-thirds of it could be plowed. One could not do it before it was cleared. He could not tell if any of the unsold railroad land has good timber on it, for he never cruised it any, and never paid any attention to the timber. He does not know whether it has a thousand or a million feet to the quarter section, or to the eighty, or anything about that, and all he means to say is that when the timber is cleared off, whatever there is, there is two-thirds of it that has soil and is sufficiently level that it could be farmed. His father lived on his place until he died; homesteaded it thirty-three years ago, and had twenty-five acres cleared altogether of the 160 acres. They had stock there—two cows, one hog and a team. Most of the ranchers up there are going into the dairying business now. They don't raise much stock. Down towards his place they are trying to get into the dairying business.

He has never been up in the mountains there. It would be hard to tell what is the average value of this land of his father's, and like land, which belongs to the railroad company, per acre on an average, but he would say that his father's place there was worth something like $25.00 an acre. Around Colton there is not much valley land, it is mostly rolling land, and he would think it is worth about twenty or twenty-five dollars an acre. Some of that which he threshed on was worth more than that over on Dickey's Prairie and around Meadowbrook. He could not say, taking 160 acres or 80 acres in a tract, how much it would be worth, but he supposes it would probably be worth from twenty-five to seventy-five dollars an acre, around Dickey's Prairie in there. Colton has a postoffice and store. There is no postoffice at Clarkes. There is no postoffice at Meadowbrook either. At Molalla there is a postoffice and store; he is not sure whether there are two stores there or not. Elwood is just a postoffice. There is no postoffice at Hyland or anything. At Liberal there is a store. There is a flouring mill and lumber mill at Union Mills. At Mulino there is a flouring mill and two stores and a saw mill. There is no postoffice at Schubel. He never was at Dodge, does not know anything about it. There is no postoffice at James. He is not acquainted at Springwater—in that part of the country. He is twenty miles southeast of Oregon City, and about twenty miles from Canby and Barlow. The Molalla is quite a little stream. He does not know where it heads; he never was at the head of it, and he could not say if it heads up in the

Cascade Range; it is up there somewhere in the eastern part of Clackamas County. He never was up there and does not know anything about it.

Whereupon on redirect examination witness testified that he does not know who composes the Swedish Colonization Society that handled the lands bought by S. W. R. Jones from some one, he does not know who Jones got it from; that land was situated there in section 35, that is east—he owned that, and then in township 5 south of him. Jones owns some in there, he owned something in the neighborhood of four thousand acres. The Swedish Colonization Company bought that of the Jones heirs. The company bought the whole piece—the Swedish Colonization Company—and they distributed it out just as one wanted it. One could buy five, or ten, or forty, or eighty acres, whatever he wanted. They have disposed of most of it, and most of it is occupied. They are going ahead and making farms out of it, and people are living on it. Some of them are making a living off that land. Some of them are working out. There are poor men who work out once in awhile to get groceries, so they can improve their land. They are still clearing the land. The Swedish Colonization Society bought this land about four years ago, and then there are new ones coming in ever since, every year. He is not sure whether it is more than four years ago; he is not sure about it, it might have been longer than four years; the records are more accurate on that subject than his memory. This land that the Swedish Colonization Society has distributed among settlers is just

about the same as the rest of the lands in that general vicinity. He has never been but about a mile east of his place, just across section 35, on 36. Section 36 is just about the same thing as his. He can see the land beyond him there, east. After one gets east of 36, the foot of the mountain begins and he is in what is called the foothills in section 34. Those foothills increase as one approaches the mountain. According to the geological survey, the altitude where he lives is about seven hundred feet.

Whereupon on recross examination witness testified that he knew S. W. R. Jones in his lifetime; does not know whether he is dead or not. He used to live on French Prairie, out near Gervais, and the last he heard of him he was living, and was a speculator in lands, and bought lands wherever he could. He does not remember just when the Swedish Colonization Association bought these lands from Jones or his estate. It seems to him that it was like four years ago, but it may be longer than that. He does not know what they paid an acre for it. This Swedish Colonization Association belongs at Colton, and he does not know who composes it; he knows some of the men who are in the company; they are farmers making homes there. They come from different places, some of them from Dakota, some from Nebraska, and different Easten states, but he could not tell how many of these farmers are in this Swedish Colonization Association. Just a rough guess he would judge about sixty families of them who moved in there, all on this four thousand acres, which they are farming and clear-

ing up. He does not know what they paid for it an acre. They bought whatever they felt like. Some of them had means, and some of them had to borrow money to buy their places, and the Colonization Society helped them. It is a sort of community of interest that these Swedish families had when they organized this association, and are dividing the land among themselves. He threshed grain for them this year. He could not tell how much. Some of them did not have over 150 or 200 bushels, and then some of them had more. Part of these people are east in 35, and part of them are south of where he lives. He threshed for two farmers in section 35. He thinks there are about four families and one bachelor who live in section 35, and the rest are about from a mile to two miles west and south of him, where he threshed. This land is mostly burn. It has been burned off before it was settled; burned a great many years ago, some forty or fifty years ago, maybe longer. He does not know what that land is worth that these people have but it is about the same as his.

Whereupon J. L. BOYLE, called as a witness on behalf of complainant, being duly sworn, testified that he is fifty-two years old; resides in Canyonville, Douglas County, Oregon, and has lived in Douglas County, where he was born, all his life. He was born and raised in section 7, township 30 south, range 4 west, and the last four years has lived in section 27, township 30 south, range 5 west. The place where he was born in township 30 south, range 4 west, was the donation land claim of his father, who filed on that donation land claim

some time in the fifties. His donation land claim was 160 acres, and then he had a pre-emption of 85 acres. He has been a farmer all his life, excepting the last four years; has been personally engaged in farming. He has been a justice of the peace several times, a deputy assessor and notary public, and is a notary public now. He was deputy assessor in 1898, 1899, 1900 and 1901, and as such was required to examine the lands assessed in township 30 south, ranges 1, 2, 3, 4 and 5 west. As deputy assessor he worked in that locality, and made the assessments for those townships, and in the vicinity of where he was born and raised. He thinks he is familiar with the land in those townships, having been born and raised there and over them more or less all his life. As deputy assessor he also had to visit all the settlers in that community and assess their personalty and make assessments on their real property. There are railroad lands in the immediate vicinity of his father's donation land claim. Sections 19 and 20 are immediately south of his father's donation land claim in township 30 south, range 4 west. His father applied to purchase railroad land in the seventies; his father and a partner in the stock business made a filing on 160 acres each. His father's was in section 19 and that of his partner, Gilbert McNear, was in section 29. They never obtained the land. He did not exactly make an application, but Mr. Britt was the land appraiser of the company and he made an application to him and offered him $2.50 an acre as the railroad land agent, and Britt said he would put the matter before the company, and he came back

afterwards and appraised the land. This land has all been surveyed since. It was the south half of the south half of section 19, 120 acres of which that he applied for. There were 160 acres there vacant, but he only tried to buy three forties. That could be made a good farm, but he did not intend to use it as a farm, but as a stock range to raise stock on. Britt told him that he could have one forty of it for $2.50 an acre and the rest of it for $5.00 an acre. Britt was there and made an examination. He could give the name of one farmer or settler in section 19, township 30 south, range 3 west, who owns lands adjacent to railroad land. B. H. Fate bought 160 acres himself—80 acres that he paid $2.50 for and 80 acres $3.50 an acre for, and he bought a man's right, a man by the name of Andrew Werley, he bought his railroad right and paid $5.00 an acre for it. Werley contracted for the land. Tate took up the contract and paid for the land. He has it practically all under cultivation now. Practically all the railroad land adjacent to that which is now owned by the company, can be made homes. He does not know just how much of it there is, but the greater portion of that can be made good homes; there is no question about that. The even section there are all taken up and homes are on them. The odd sections are railroad lands and, he understands, off the market. That applies generally throughout this territory with which he is acquainted; that is, the even sections are settled upon and the odd sections are vacant.

Q. Now, Mr. Boyle, from your acquaintance with this territory you have testified that you have been over

in assessing and have lived in all your life, what percentage of the lands, in 160-acre tracts, could be used as homes; that is, a settler could go on there, take 160 acres, and support his family as the ordinary settler does?

A. Do you mean that it should be tilled, plowed, cultivated, or as a general purpose as a farmer uses his land?

Q. As a farmer uses his land.

A. Well, I should say that he could use the greater per cent of it. I am satisfied, from my observation as an assessor, that fifty per cent of it can be tilled.

Q. Fifty per cent of the lands could be tilled?

A. Yes, sir; in that part of it that I assessed and went over, I am satisfied that fifty per cent of that can be plowed. But it can all be used for pasture land. Now, I am not saying that there isn't timber on it at all, because there is a great deal of good timber on that land.

Whereupon witness testified that in this territory the soil is fertile. They grow wheat, oats, corn, barley, prunes, apples, in fact all kinds of vegetables and fruits, except tropical fruits. They raise stock there. Prunes is the main fruit that they raise; also corn, wheat, oats and barley are the main grains. The people who have settled on the land have the greater portion of the ground cleared and in cultivation. They have gone in to the timber in there and cleared it.

Q. Mr. Boyle, in your opinion, what has been the effect of the failure of the railroad company to comply with the conditions of this grant in refusing to sell land to actual settlers at $2.50 an acre, and in selling the lands in large quantities?

A. It has retarded the development of our country.

Q. In what way, Mr. Boyle?

A. By preventing settlers from settling on this land. But now, if the railroad company would sell it at $2.50 an acre, I don't doubt but what it would soon settle up.

Whereupon witness testified that the demand for land in this locality for settlement purposes is good and has increased in recent years. The first settlers in this country took the bottom lands and the next best the higher lands, and they are now going on up. The bottom land is usually considered best, that is true, but in his referring to bottom land one must understand that the early settlers got on the larger streams and took their homesteads, but where he lives the creek bottoms are just as good land, but it is more narrow. Land of this same general character is being cultivated in the county there and used as homes by farmers.

Whereupon on cross examination witness testified that he assessed these lands around Canyonville for the years 1898 to 1901, both inclusive; that is, four different years. He would not be willing to state the number of acres of railroad land that he thinks he assessed, that

the company owned at the time he made the assessment, and could not approximate, for the simple fact that he only assessed land that the company had actual patents for. Ranges 2, 3, 4 and 5 are within the limits of the railroad grant; the northwest part of 1 is within the limits, and the southeast part is not, that is in the idemnity belt, and part of that which he assessed is within the place limits, or within the twenty miles, and a part within the indemnity. He assessed in township 30 south, ranges 1, 2, 3, 4 and 5 west. There are thirty-six sections in a township, each section containing 640 acres, and every odd section belonging to the railroad company, with the exception of what had been taken up, and barring two sections in every township for school land. Canyonville, as shown on Defendant's Exhibit 259, lies almost due east of Riddle. He sees that this yellow belt shown on Defendant's Exhibit 259 is all through along the Umpqua River and around Riddle to up towards Myrtle Creek, and that map, according to the legend, represents lands that were within the place limits of this grant, but which had been taken under the donation land law, or the pre-emption law, like his father did, before the railroad grant became effective along about 1889. Canyonville is in section 27, township 30, 4 west. That is an old settled part of that country, and his father's donation land claim is in the next township east, sections 7 and 18. The old home is in section 7, but under the donation land claim his father took part of section 7 and part of section 18. There were other donation land claims along the Umpqua

River, on both sides of the river, and there were a lot of donation land claims taken around Riddle, clear up to Myrtle Creek, and on down to Roseburg, Winchester, Oakland and Wilbur, in all that country. General Lane lived and died at Roseburg, and was the first Governor of Oregon, and the first United States Senator, and that was one of the oldest settled sections of the State of Oregon, around Roseburg. It was first settled in the Willamette Valley, down about Salem and Oregon City, and Clatsop, near Astoria, down on Clatsop Plains. Judge Deady used to live and do business out at Douglas in that Umpqua country. He generally practiced law in Roseburg. There have been sales of railroad land in the vicinity, in township 30, ranges 1, 2, 3, 4 and 5 west, but none recently that he knows of. He had this talk about buying this piece of railroad land with Mr. Britt in 1892, he thinks it was, and the company offered 40 acres to him at $2.50 an acre, and the other 80 acres at $5.00 an acre, and he did not buy because he did not care to pay $5.00 an acre for the land. It was worth it then, and is worth more today. In section 30, an adjoining section to 19, Hopkins sold 160 acres for $4500 cash, just the same kind of land, adjoining the very identical part. It would be pretty hard to tell how much this 120 acres would be worth an acre today. Hopkins cleared his land, had it all cleared off and under fence. This other land is not fenced, but he would be willing to give a man $10.00 an acre for this 120 acres if he would give him a deed for it—it is worth that in his judgment. Hopkins' land had improvements on it, and this land

has not. He would give $10.00 an acre for it, but would not give any more. This railroad land that he assessed in the two lower west townships is not mostly timbered land. The other township the greater portion of it is timbered. Douglas County did not have a cruise of these lands when he assessed them. They have now, he understands. There are saw mills and timber holdings in the vicinity of these lands. There are three saw mills in the immediate vicinity of Canyonville. In this territory to which he refers there is the Michigan Land Company, represented by the Gardner brothers, that owns land, but he does not know how many acres of timber land they own. Timber is valuable now. He thinks timber first became an item of value for the purpose of market and sale in that section of the country about eight or ten years ago, and timber claims sell from eight hundred dollars to a thousand dollars, depending on the cruise. The saw mills pay from 65 cents to one dollar a thousand for timber where they buy it, depending on the stand on the quarter section as to what it is worth for timber. The demand for timber is not very active. It has never been very flush up there because they are six miles from the railroad and fifty-one miles from the sea. If there was a railroad out from Myrtle Creek up the Umpqua River into the Cascade Mountains so that this timber could be logged to it or hauled to it, the timber would have a very large value, and so would their agricultural land. Transportation is certainly needed. There is a great deal of heavy timber on the South Umpqua up in the Cascade Mountains, and all that it needs is trans-

portation to make the timber and the land valuable.

Q. The first value, though, would be the timber, wouldn't it, primarily.

A. No, I am a farmer. I look at it from the other side.

Q. Now, suppose that you had a quarter section out there near Canyonville, or on the Umpqua River where it could be logged, that had on it six million feet of merchantable saw timber, and the soil was good, but it had this heavy timber on it, and the company would sell that to you for $2.50 an acre, as an actual settler under this law that the government is trying to enforce or assert in this case, don't you think, if you got a good title to that 160 acres, of good timber land, and it went six million feet to the quarter, that you could sell it for about six thousand dollars for the timber alone.

A. And keep the land?

Q. Yes.

A. Sure I would.

Q. Well, don't you think you could do that?

A. No, I don't think so.

Q. What do you think you could get for it?

A. Well, that is a pretty hard proposition. They are selling from $800 to $1000 per claim now.

Q. I understand.

A. Now, if a railroad company would go in there

it could not possibly increase the valuation so much, could it?

Q. Well, I am asking you. You said that the stumpage value was about 65 cents.

A. From 65 cents to a dollar a thousand.

Q. Yes, to a dollar a thousand. Now, if it was a dollar a thousand, and there was six million feet on the quarter section, that would be six thousand dollars, wouldn't it?

A. But now wait just a minute.

Q. Well, answer the question and then we will argue it.

A. That is true. That is true. But now we will take the Alder Creek Lumber Company, one mile west of Canyonville, bought from Mr. Biggs six years ago, 160 acres of land that has timber on, 160 acres of land, and they have not taken it half off yet. Well, now, if a timber company is going to be twenty-five or fifty years getting off the timber, why, the man would not live long enough to farm his land, would he?

Q. Well, now, isn't that the trouble with this land, and why it was not settled before the timber had any value was because they could not market the timber?

A. No, sir.

Q. What was it?

A. The trouble has been there has been too much open land to take up in Oregon. Now, people are tak-

ing up the timber land just as fast as they can get it, and clearing it in my section of the country just as fast as they can.

Q. Well, now, as a matter of fact you can go down around Myrtle Creek and on the South Umpqua, along the place where your father had a donation land claim, and buy that land that was settled fifty years ago for fifty dollars to seventy-five dollars an acre, can't you?

A. No, you can't, not improved land.

Q. What can you get it for?

A. It is selling at—the place adjoining father's own homestead place was sold for $16,000.

Q. How many acres?

A. 160 acres.

Whereupon witness testified that the place adjoining his father's homestead which sold for sixteen thousand dollars was a place that had prunes that were bearing and selling in the markets of the world. These lands are not all covered with fine prune orchads. Some of them have prune orchards that are twenty-five years old. The areas around Myrtle Creek there have been supplying the prune market, and prunes have been a staple for twenty years.

Q. And the prune orchard of course would bring a big price. But I mean the land that is not put in prune orchards, or that is not in that high state of cultivation like some of this land around Medford, with an orchard on it eight or ten years old, the land is worth

about $50 to $75 an acre, isn't it, before the orchard is put on?

A. I think you are just about right. Without an orchard the land is probably worth, would sell for $50 to $75 an acre. With an orchard on it——

Q. A great deal more.

A. Now, the one that I said sold for $16,000 only has 18 acres of an orchard on it.

Q. But eighteen acres of fine prune orchard there, at the prices that rule, would be a fairly good piece of property, wouldn't it?

A. Surely, surely.

Q. Some years you don't make anything on the prunes, and other years you make a good thing? That is right, isn't it?

A. Yes, sir.

Whereupon witness testified that never in his experience has it been that prunes would not pay the cost of drying. Some years prunes were really an unprofitable crop, but that was before he was engaged in the business. If the land had timber on it, it certainly could not be used for agricultural land until the timber was removed. Some of this timber is inferior. The better the land the better the timber.

Q. And the value of a quarter section depends largely upon the amount of timber there is on it? At present in the market, I mean.

A. Well, not true, not so altogether in our locality. I am speaking from my immediate vicinity. We do not consider the timber as you people do here probably, because we do not consider that 160 acres that is not worth more than $800 or $1000, it hardly pays a man to file on it. Those people who filed on land, filed on timber claims, are selling those claims now for $800 to $1000; and I think the Gardiner brothers would so testify if they were here.

Q. Well, what are they selling these $800 or $1000 claims for? What are they selling them for? Why don't they stay there and make homes?

A. They were men who were located by timber men, who never intended to make homes there.

Q. Well, then, is that the way these lands have been taken up out there?

A. Well, some of it has been taken up that way, sure.

Q. Timber companies get fellows to go out and enter the land?

A. Well, I don't know that now, but I do know that a great many of them have sold their claims to the Gardiner brothers. It is a Michigan firm—Michigan people.

Q. I understand they have only got $800 to $1000 for the 160 acres?

A. I know of three claims that have been sold for $800.

Q. Did they commute and pay up?

A. They paid for their claims, yes.

Q. That is to say they commuted their homesteads?

A. No.

Q. What were they?

A. They were timber and stone, taken up under the timber and stone act.

Q. They were taken up under the timber and stone act, where they didn't have to live on the place?

A. Yes, sir.

Q. They had to go through the farce of swearing that they went and looked at it and saw that it was timber?

A. Yes, sir.

Q. Bought it at $2.50 an acre, or whatever the government price was above that?

A. I don't know what the government price was.

Q. As soon as they got the title why then they sold it to these timber companies?

A. Some of them have.

Whereupon on redirect examination witness testified that the majority of these people who bought lands under the timber and stone act were principally residents of towns who went out there and purchased the lands under the timber and stone act, which required no residence, no necessity for cultivation or improvement of the

land, and the United States used to sell that land at a flat price of $2.50 an acre until within recent years, but it now bases the price upon an assessment or upon a cruise that the government makes of the land. He does not know of any homesteaders who have gone up there and taken up claims merely for the purpose of getting the timber, who abandoned their claims as soon as they proved up. The Hopkins claim sold for $4500, 160 acres—what they call a mountain ranch. That was in section 30, adjoining section 19, the township that his old home is in. It was in the mountains. The other sale that he spoke of, the 160-acre tract, for $16,000, was an old donation land claim, that was a farm; it has eighteen acres of orchard on it, and the rest of it was farming land, the majority of it. There was about forty acres of what they call waste land—grazing land, too steep to farm. He has a general slight knowledge of the territory south of township 30. He was never over that very much. In township 31 south, ranges 3 and 4 west, he made the assessment there one year, and then turned it over to a Mr. Redfield who was deputy assessor in that precinct. That land is practically the same as that about which he has testified; it is practically all the same all over that country from Roseburg south to the boundary line of Douglas county. He has hunted and been over it, herded sheep over it and drove stock over it quite often. He has been over the lands in township 29 south. He does not know that he has ever been in township 28, but he has been in township 29, and the same condition exists as to that land. Myrtle Creek is in township 29,

runs along through 29 and 28, and is settled from practically the head of Myrtle Creek. Day's Creek heads in township 29, and is settled—there are settlements from its mouth to the head. These settlements are more or less along the streams which run up into the mountains, until one gets in the Elk Creek country, in range 1, in the same range that he lives in, one west. That is more of a plateau, more rolling; quite a number of stock ranches in there. They do not pretend to farm, but raise fruit and stock. There are streams running extensively through these lands. By streams he means creeks, small streams leading into the river or larger creeks. The purpose of settling on the streams is in order to have water, and one gets more or less level land on the creek bottoms.

Whereupon J. H. TURNER, called as a witness on behalf of complainant, being duly sworn, testified that he is forty-eight years old, lives at Mulino, Clackamas County, Oregon, and follows carpenter work mostly now. He has a little place that he lives on and works on odd spells. He has lived at Mulino about four years, and came to Oregon in 1887. He lived east of Portland eight miles one year, and in 1888 moved into Clackamas County. Mulino is, he believes, in section 17, township 4 south, range 2 east. He has 20 acres in section 18, His land is on Milk Creek, west of Mulino. He has been all through the lands shown in green colors on Defendants' Exhibit 259, around Mulino, and he has been at Hyland, Springwater and Elwood. Elwood and Dodge are in township 4 south, range 4 east, shown on this map. He used to own forty acres there on Milk Creek, but he

cannot tell the section it was in, but it was right in there by Elwood. There is some railroad land in that Hyland country, between there and Elwood, but he only knows of one forty of these railroad lands shown on that map. He is acquainted with that general country in there marked with the green markings, has hunted birds all over it. He is acquainted with the general character of it, its formation and the soil, because he worked around Hyland there, farming for other people, and his father had a place there, which witness farmed. He rented another place around Hyland there, and owned the forty acres in there at Elwood. He knows pretty nearly about what the land through that part of the country is. He farmed about five years there in Hyland, and before that for other people; he never ran a place for himself, but worked for other people.

Q. Well, Mr. Turner, on this railroad land that you are acquainted with, have a general knowledge of, what is your opinion as to whether that land is suitable for settlement in 160-acre tracts?

A. Well, in that there locality, yes. But as far as knowing where the railroad land is located, I don't know anything about it.

Q. You didn't know whether they were railroad lands or other lands?

A. No, I didn't. There was some that had bought railroad lands, so they said, but then I don't know as to that. But take it through that country there, it is good soil. They raise fair crops. They raised around

Hyland there, when I was there—that has been fourteen years ago though since I was there —they raised from about fifteen to twenty bushel of wheat on an average, and from about forty to sixty bushel of oats.

Q. What would you say as to this land being suitable for settlement in 160-acre tracts, that is, if a man would want to go on that land, 160 acres of it, and farm?

Mr. Fenton: Defendants object to that unless the witness knows of the railroad land that is of that character. You may answer.

Q. Do you understand the question, Mr. Turner?

A. I don't know as I really do.

A. Well, if a man would get it cleared up, it is a good ranch, good ground.

Whereupon on cross examination witness testified that he does not know much about these railroad lands around Mulino. There is not much railroad land in there. That is an old settled country around Mulino, and there is just a little railroad land lying unsold east of Mulino, towards Springwater. The Molalla River is an old settled part of Clackamas County, and Mulino is on Milk Creek. It is quite a stream, and affords water there for grist mills. There is one saw mill in Mulino, which gets its logs up Milk Creek; about the farthest that they are getting logs so far, is at a new saw mill which went in there lately about a mile and a half away, but there used to be a mill there years ago. This land in there east of Mulino is mostly timbered. It is quite a

ways up to the Cascade Mountains, but then one goes east up towards Clarks, and it is principally timber and brush all the way, there is some saw timber up there. Up on Buckner Creek there is some good timber up in there. He means that when the timber is taken off of this land it has sufficient good soil and is sufficiently level that it could be farmed, or most of it; that is what he said, if it was cleared it would make good ranches. He never took a homestead and never applied to purchase any of this railroad land, and never owned any of it. He owns twenty acres of land down at Mulino, it was all timbered. He has about three acres cleared, something near that, he never measured it, the rest of it is timber and brush. He has some saw timber on his twenty acres. He offered the timber stumpage on it for $1.25 to a man the other day, the market price ranges from $1.00 to $1.25 and $1.50, some are getting $1.50, but not very many, there are a few. He supposes that there would be perhaps 150,000 feet of saw timber on his twenty acres. It has been partly logged off. There is some big timber left. He does not know why the big timber was left, but they just took off what was the handiest. It was logged off by James Atkins about six or seven years ago, something like that. Witness had a brother-in-law that he got the timber for. He would not take less than fifteen hundred dollars for these twenty acres, and thinks it is worth $75 an acre. He has bottom land on it, and in one way his land is better than the general run of land because it is made land, better than the hill land for some things, as far as fruit

is concerned, they can beat him to death, that is, the upland is better for fruit, for apples and such as that, much better.

Whereupon JOHN ZEEK, called as a witness on behalf of complainant, being duly sworn, testified that he is sixty-four years old and resides near Canby, Clackamas County, Oregon, and has lived in Oregon more than forty years. He is a farmer at present, was formerly a blacksmith, and has been engaged in farming about three years. He lives in an agricultural community and has been acquainted with the business of farming during his residence in Oregon, and is acquainted with the lands that are suitable for tillage, useful for farming purposes to a certain extent. He has lived in Clackamas County twenty-five odd years, and for part of the time in the southeastern part, that is, not far beyond the center of east and west perhaps, but pretty well towards the south side. Part of the time he was in Molalla, most of the time in and about Canby, and some of the time in New Era. Referring to Defendants' Exhibit 259, he does not know anything about the range, but knows about the town of Molalla, and four section corners there where the town of Molalla is. The map shows Molalla at the corner of sections 4 and 5 and 7 and 8, in township 5 south, range 2 east. He notices that the lands colored in green represent on this map the unsold lands of the Oregon and California land grant, and he is acquainted with some of those lands south and east of Molalla about seven miles, maybe a little more than seven miles south, and he don't

know just how far but several miles east, approximately five or six miles along the Molalla River. There may have been a new postoffice established in the vicinity of James since he was there, it was thirty-two years ago that he was there. He knows where Wilhoit is, and is somewhat acquainted with the unsold lands of the railroad company in the vicinity of Wilhoit. He is not acquainted at Colton, but knows where it is. He has never been over in that vicinity, nor at Dodge or Elwood. South from Molalla to Soda Springs, and a little perhaps the other side, as they would go hunting, and east from Molalla five or six miles, where they would go out hunting and fishing at times through that section of the country, he has traveled over pretty well; that is, about five or six miles east from Molalla, and about seven or eight miles south, and he is acquainted with a portion of the unsold lands of the railroad company in that territory. He was looking for land somewhat himself when he was out there, as well as hunting. When he would come to a piece of railroad land, those that he was with would know what was railroad land and what was government land and they would tell him and he would look at it. He is acquainted with the general character of these lands in that community. Some of the unsold lands of the company were very desirable; that was his estimate of it. Some of it was a little bit rough, but there was a very small portion of it, in his estimation, but what could be cultivated in one way or another. He was looking for land, and when he would come to a part of this land that was railroad land, he

would take notice of it in particular to see about how much there would be that could be cultivated and so on, and the price in the neighborhood surrounding, and there were a good many pieces that he thought was very desirable land for farming purposes. Some of the land in this vicinity was quite rolling, some of it was what one would call rough land, and there was some that was compartively level land—not very large areas of really what one would call level land, like there is here in the Willamette Valley, but there was a large portion of it that could be cultivated. The topography of the ground, he would call rolling. He is not acquainted at present with the demand for land by settlers in that community, but at that time the demand was considerable. Nearly all of the government land had been taken up — one could not find anything that was vacant, scarcely anything at all. His acquaintance with this area would go back about thirty-two years; that was the time that he was there, thirty-two years ago. He has just passed through that country since, but lived there at that time and carried on business at Molalla, and he has retained a general knowledge of the land there at all times; he has not forgotten it by any means.

Q. If the railroad company complied with the conditions of the grant and opened this land to sale to actual settlers at $2.50 an acre, what is your opinion as to whether it would have been taken by actual settlers?

A. I think that if the land had been available, it would nearly all have been taken. The demand, I be-

lieve, was such, and the wants of the land was such that it would have been nearly all taken.

Q. When you say if it had been available, what do you mean by that, Mr. Zeek?

A. Well, I mean that if they could have got it from the company, there has been so many years it has been out of the market that you could not do anything with it; that they could not get it.

Q. This territory that you speak of, how does the railroad land lay there generally as to its being a compact body or in scattered tracts?

A. Well, I really don't know exactly how much would be in a tract, but then there were a good many places we could get a hundred and sixty acres in a body and other smaller tracts.

Q. Quite a number of tracts of railroad land laying in this vicinity.

A. Well, as to the amount of lands lying contiguous to each other, as to that I could not really say, because you travel around quite a little. We would come to one piece of railroad land, and then we would go a little further around and find another place, and so on around. I didn't take particular notice of about how much there would be one joining the other. But there was 160 acres in a good many different pieces.

Q. Are there any lands of similar character settled upon and farmed in that community, Mr. Zeek?

A. Yes, all the Government land there was there

was of similar character, and it was nearly all settled upon at that time.

Q. Is that settled upon by farmers?

A. By farmers. Yes, by farmers. They would not undertake to farm it all, of course, but they would farm what they needed to, and they would have some stock.

Whereupon on cross examination witness testified that he now resides near Canby, in Clackamas County, and has so resided there in the neighborhood of about twenty odd years. The nearest mail route to him is Canby, four miles, east and north. Canby is a level prairie country. Some call it the lower end of the Molalla Valley; it is close to the mountains. Canby is on the Southern Pacific Railroad, which railroad is owned by the Oregon & California Railroad Company, and leased to the Southern Pacific. He lived in Canby part of the time, carrying on business in Canby, before he moved to his farm near Canby. Prior to going on to the farm, he was at Canby three years. Before he moved to Canby he came from Sellwood, which is just outside of the city limits of Portland. He lived at Sellwood about a year, and before that he lived at Clackamas Station, in Clackamas County, Oregon, this side of Oregon City, on the line of this same railroad. He lived at Clackamas Station about a year, and before that he was at Mulino. He moved around considerable, but he thinks he was at Mulino just a little while, not more than two or three months, doing blacksmithing there, and before that he

lived at Molalla Corners, where he had a shop; that is now the town of Molalla, which is not a large place; it was not very large at that time. He does not know its size now, he has not been there for a few years, ten years or more. He passed through Mulino about two and a half years ago, something like that. He does not think his knowledge of the country is just casual, he knows something about it. He has not been over all of the land around Mulino, perhaps over not entire sections, but in more than two or three sections around Mulino. He does not know exactly how far east of Mulino he has been, but he has been up above Meadowbrook. About a year and a half ago he was out to Mulino, and went up above Mulino to what is known as Schafer's mill, almost to Schafer's mill, going up the Meadowbrook road. He does not know how far Schafer's mill is above Meadowbrook, but he thinks two or three miles, something like that. Molalla is out in the old settled part of Clackamas County, and from where the road called the Oregon City road strikes the Molalla River, he would think it is about three miles, perhaps a little more or less. He does not know that he could describe the quarter sections or half sections or eighties of this railroad land that he was over when he was out there at the time of which he speaks; he cannot tell in what township or range or section it is in. He has been east of Molalla five or six miles, a little more or less, up the Milk Creek, up past Meadowbrook, and then to the left out to Springwater. He does not know just how far it is, but he has been up beyond Molalla five or six miles.

Molalla is shown on Defendants' Exhibit 260; also Molalla River, Mulino and Meadowbrook. Meadowbrook is northeast of Molalla. Mulino is not so far up. The map may be correct. The river runs north at Canby, and Canby is east of the Molalla River. These railroad lands that he saw were about five or six miles from Molalla and south around Soda Springs. He recognizes Wilhoit as shown on the map and it would be seven miles from Molalla to Wilhoit by straight line, and he was beyond Wilhoit a mile or so, something like that; and then east of Molalla five or six miles.

Q. That would be, one, two, three, four, five, six. Well, now, you see six miles wouldn't get in that range, wouldn't get over five tracts of railroad land now unsold, of about eighty-acre tracts, or 400 acres of railroad land in that vicinity, and you wouldn't get in the other direction, from Molalla south to Wilhoit, but about two sections scattered around on Rock Creek, and between Wilhoit and Molalla. Now, are those the lands you saw?

A. Well, you don't think for a minute that I am trying to tell you what there is unsold now. I am telling you what was then.

Q. When was this, now?

A. About 32 years ago. I am not telling you anything about now.

Q. What you are testifying about now may be relating to land that the company owned 32 years ago?

A. Yes, in this same tract.

Q. Oh, I see. So that if they only own these small parcels at the present time, you could not say from your testimony what the character of those parcels is?

A. Not any particular parcels, no.

Q. All you can say is in a general way that you were out there 32 years ago, and you saw some railroad land that looked to you and was in your judgment fairly good agricultural land?

A. Yes. It was extra good, some of it.

Q. Well, it was not any better than the even sections.

A. No, but they could not get them, that is the reason—the even sections were all taken. There was no Government land to be taken there that I could find.

Q. It had all been taken under the donation or homestead or pre-emption law?

A. Yes, sir.

Q. A good deal of it had been taken under the donation land law, hadn't it?

A. Well, I don't know whether there were any donation land claims there or not, but I don't think there was. There may have been, but I don't think there was. I don't know of any.

Whereupon witness testified, referring to Defendants' Exhibit 259, and the yellow field shown thereon, that there was some land taken under the donation land

law there in Molalla; he thinks one section cornering at Molalla, that was Sam's section, which had been taken under the donation law. The homestead law was passed, he thinks, in 1862 or 1863, and the pre-emption or donation law before that. There was not very much timber on any of this land that he was acquainted with. There was some, but not very much, it was mostly in a burn, mostly burned land. Thirty-two years ago, so far as he could find out, the piece that he bought from the railroad company, that he bargained for in the Springwater district, the company was selling it all the way from $3.50 to $4.00 and up to $10 an acre. The more timber on the land the higher the land, the higher the price. Timber at that time did not have very much commercial value, but they estimated the timber land as being more valuable than that which did not have timber.

Q. Well, now, wasn't there a good deal of railroad land in here about that time that could have been bought for $1.50 an acre?

A. Not to my knowledge.

He bought two little tracts from the company in the Springwater neighborhood, but he does not remember what sections they were in now, it has been so long ago. He could not say how many acres, but he thinks it was something over twenty acres. He bought that to make a home on it, but never succeeded in living on it. He fenced in a part of it and plowed it and planted some fruit trees and garden stuff, but never got on the farm.

He paid from $3.50 to $4.50 an acre for it, and bought it for a home. He did not live on it because his circumstances would not permit him going at the time he needed to go. He bought it under the ten year system and made one payment, but did not pay it out. He forfeited his title by failing to make payments. He does not know if the company still owns the land. Part of it was timber land, and had a little good saw timber on it. He does not know whether it has been logged off. He has not been out there since about thirty-two years ago. He has not been there since he fenced in a part of it. He fenced in and cultivated about an acre and a half of this twenty acres, he would think. His family never lived on it, and he never had any buildings on it at all. He planted a little orchard, set out some berries and one thing and another, and he guesses that has all gone to waste. He does not know how many saw mills there are in the eastern part of Clackamas County. He does not know if the Molalla country is one of the oldest settled parts of Oregon. It has been settled a long time. He knows there are donation land claims there, and he would suppose it has been settled, and he knows according to history that Oregon City was the first seat of government in Oregon, and he read that the territorial council met there for many years in the fifties. He does not know whether Dr. John McLoughlin attempted to take a donation land claim where Oregon City stands but he failed to get a title to it. He has read something about it, but his memory is not exactly clear on that. He knows that Dr. John McLoughlin was the Hudson Bay

factor here in the early forties. He has read considerable about Dr. McLoughlin and knows historically that he died at Oregon City and was buried there, but he does not know anything about whether Congress perfected the title or attempted to perfect the title to that property where Oregon City stands. He knows that about Oregon City is one of the old settled portions of the Willamette Valley, and by the donation land claims out about Molalla he would suppose that it had been settled a good while, because the donation land law was repealed when the homestead law was enacted. He does not know just what year the timber market became active in Oregon or in Clackamas County, but he knows it has been quite a number of years ago; it has been as long as 1894 anyway, he would think, and timber has been in great demand the last few years. He never tried to buy any other piece of this railroad land; he was just out looking—what he knows from the settlers around where the railroad land lay; that was about thirty-two years ago, and the price of the land and so on, and then he would go and look at it. He does not know what the land around Molalla is worth, but around Canby it is worth all the way from $100 to $250 an acre. His place is four miles from Canby, and is an open farm; he has twenty-one acres there. He does not think land without any buildings on it can be bought there for less than $200 an acre, that is in the neighborhood of where he lives. They are expecting to have a railroad, an electric line, built across Canby out to Molalla, and on around by way of Silver, but the nearest

point from where he lives is about three miles to a railroad. The whole country is valuable now and rated at good prices all over around Molalla and down to Canby.

Whereupon on redirect examination witness testified that he thinks he contracted to pay for this railroad land $3.50 for part of it and $4.50 for another part of it. He bought it in two parcels—it was in two sections, and was adjoining the farm of a man by the name of Tucker, and was adjoining farming land—joined another man's farm by the name of Frank Bunney, who had bought some railroad land—and was just the same as lands that were being farmed adjacent, there was comparatively no difference. He contracted to buy that land for a farm. There was no timber on it to speak of, just a little bit on one part of it. That part that he bought, or most of it, is good level land.

Q. According to the bill of complaint, Mr. Zeek, there yet remains unsold in the township in which Molalla is situated—5 south 2 east—718 acres of railroad land in sections 3, 5, 13, 25 and 35, the tract in section 5 being only about four acres, and in section 35 being 400 acres; in township 6 south, range 2 east, where Wilhoit is situated, there is located in section 1, 420 acres; in section 5, 552 acres; in section 7, 475 acres; in section 9, 240 acres; in section 11, 40 acres; in section 13, 360 acres; in section 15, 280 acres; in section 17, 120 acres; in section 19, 315 acres; in section 21, 80 acres; in section 23, 80 acres; in section 25, 440 acres; in section 27, 160 acres; in section 29, 400 acres; in section 33, 480

acres, and in section 35, 600 acres of railroad land. And in township 5 south, 3 east, the township directly east of the township where Molalla is situated, there is 160 acres in section 1; 160 acres in section 5; 290 acres in section 7; 440 acres in section 11; 600 acres in section 13; 80 acres in section 17; 240 acres in section 21, and 560 acres in section 23—all unsold lands of the Oregon and California Railroad Company. Now, your knowledge covered a portion of these townships, as I understand—that is, south from Molalla——

Mr. Fenton: South from Molalla seven miles, and five or six east of Molalla.

Q. And in the township where Molalla is situated?

A. Five or six miles east of Molalla and about seven or eight miles south of Molalla. And the land that I speak of having bargained for was in the Springwater district.

Q. That is at Springwater?

A. Yes, I don't know the section now.

Q. Springwater is, according to Defendants' Exhibit 259, in township 4 south, range 4 east, in section 4. How far from Springwater was this?

A. It was only just simply a postoffice at that time, Springwater postoffice, and it was about—I should think about two miles, if I remember right, east.

Q. Were you acquainted with the lands in that vicinity?

A. With the lands?

Q. Yes.

A. I didn't look around very much. Mr. Bunney took me out there to show me this particular piece of land, and it was about what I wanted and about as much as I wanted, and I didn't look much farther. It suited me first rate.

Q. Your knowledge of that locality is somewhat limited?

A. Is limited, yes.

Whereupon W. H. KANDLE, called as a witness on behalf of complainant, being duly sworn, testified that he is fifty-three years old, resides at Springwater, Clackamas County, Oregon, seventeen miles east of Oregon City. Springwater is a little country town, a little village there, of store and blacksmith shop and boarding house and so on, small hotel—a farming community, just a small neighborhood town. His business is that of farming, in which he has been engaged all his life. He has lived in Springwater fifty-three years, was born and raised there, and now lives in the same locality. He lives on the old donation claim that was settled in 1852, which was in sections 4 and 5, township 4 south, range 4 east, he thinks. From his experience, he is acquainted with the farming business in Clackamas County, and has traveled quite a lot over the county. They produce most all kinds of grain, wheat, oats, vetch and field peas, and most all kinds of fruit—

apples, pears, cherries, prunes—most anything in the fruit line outside of peaches, all kinds of small fruit do well there. He has raised more or less stock in that country and has been in the dairy business quite a little bit. One might say that one-half of the farmers in the community of Clackamas County, in which he lives, milk a few cows and sell the cream at the Schleswick Creamery in Clackamas County, near the Clackamas bridge near Stone. There is a good demand for the products of the dairy. Referring to Defendants' Exhibit 259, Springwater is in section 4, township 4 south, range 4 east, and he lives on his farm half a mile east of Springwater. He is generally acquainted with the unsold lands of the Oregon & California Railroad Company, represented by the green sectional markings. He has been over them more or less. He is well acquainted with the lands, he thinks, as far as ten miles east of Springwater. He has been as much as forty miles east of Springwater in the mountains, but that would be on hunting trips, hunting expeditions up there. But for ten miles east of Springwater he has hunted over that and helped his neighbors gather beef cattle in the foot of the mountains and the foothills there, and been over the lands more or less all the time. He is not so well acquainted on the north side of the Clackamas River; that would be in the Garfield district, but he has been through there a number of times. He does not know just where the railroad land would lay, or anything about that north of the Clackamas River but east, on the south side of the river, he has been over more or less all his life,

ever since he was a little boy, and his knowledge as to the northeast is of a more general character than east. Southeast of Springwater he would be acquainted with the lands out to the foothills, he would judge it would be eight or ten miles—that would take in the Elwood district and the Dodge district. Elwood is shown on this map, Defendants' Exhibit 259. He has hunted over the mountains a few times up in towards the south branch of the Molalla, on the headwaters of the Clear Creek and Molalla—the north branch of the Molalla. He has been over these lands on the headwaters of Milk Creek, on the very edge. He is not acquainted with the lands in the vicinity of Canyon Creek, except just passing through. He could not tell anything much about those lands. He has passed through there and knows where Canyon Creek is, and Milk Creek. He has hunted on the headwaters of Canyon Creek, in the mountains, but further down he knows nothing about it. He is a little better acquainted a little south and east of Springwater than he is right east. Cazadero is right east of Springwater, that would throw him on the east side of the Clackamas River. He has not hunted or been on that side of the river as much as he has on the southeast side of the river. He is acquainted with those lands marked in green in township 4 south, 5 east, on the north fork of the Clackamas River, which is headed northeast from Springwater up towards Mt. Hood. The North Fork of the Clackamas is on the north side of Springwater, and Milk Creek is south—a little west of south of Springwater. The headwaters of it are almost

due south from Springwater. The land south and east of Springwater, in Township 4, has been burned over about eleven of twelve years ago, and a majority of it, one might say, would be called deadening. It is covered with more or less dead timber and underbrush that has grown up in the deadening, and it is rolling land, lots of spring branches breaking out from the hills, and running into the Clackamas River. A proportion of that land could be farmed all right, and it is good fruit land. That condition does not extend as far east as his knowledge runs. If one would run ten miles southeast of Springwater, he would get into the foot of the mountains, and when they get into the foot of the mountains, of course that is rough and rocky and hilly, and is not good for anything except some pasture land; but as far as eight miles back southeast, there are settlers all through, and that is true generally of all the land within that radius. Most all of the homestead land is taken up there, and as a general thing people are living on the land. There is once in awhile a vacant piece where they have proved up and went off and left it there, he supposes until they would get able to start in and improve it, clean it off; but most of them have a man on them. These settlements extend back about ten miles southeast, clear to the foot of the mountains, up on the foot of the mountains, and up the Clackamas, on the main fork of the Clackamas. He knows a party who owns a good ranch up there thirty miles above Estacada, a man by the name of Davis. He has taken up a piece of land there that has quite a lot of opening on,

and he is farming it, raising hay and garden stuff, and has set out fruit trees. Farm products grow there in that locality. They raise good fruit forty miles southeast of Estacada, on the Clackamas River, in the Hot Springs country. That is getting pretty well up into the foot of the mountains. It is too rough for farming in the mountains unless one would get onto a bottom on some of those rivers. There are benches in the mountains in the vicinity of which he has testified. He does not know that there would be anything to prevent a man from farming there, only those benches are small. A man could not get a very big farm on those benches in the mountains. One will find benches there of ten or fifteen acres which a man could farm. Clackamas County, up in the foothills, is not considered a very good grazing country. They do not have the grass there that they ought to have. Still cattle do fairly well, but it is not considered a good grazing country. It is good for fruit lands, small fruits, and is all right for grain if it is cleared up once, but it takes some muscle to clean it up.

Q. To what extent, if any, Mr. Kandle, has the railroad company's failure to comply with the conditions of this grant and sell the land to actual settlers at $2.50 an acre, and withdrawing the land from sale—what effect has that had upon the settlement of that land in the vicinity that you have testified to?

A. There is land up there that I have seen people looking at that would like to buy it, but they couldn't hardly afford to pay the price that they held the land

at; they didn't think they could go onto a wild piece of land and pay the price that the railroad people wanted for it, and come out—pay for it and make a living for their family. The consequence was they didn't take it.

Q. How long ago was that, Mr. Kandle?

A. Oh, you might say there has been people looking at railroad lands back for the last thirty years.

Q. That land has been off the market for some years, hasn't it, to your knowledge?

A. Yes, the last few years. But years back, you know, it was on the market, and people looking at it, and a good many of them did buy, and some did not.

Whereupon on cross examination witness testified that his father took 320 acres in the section east of Springwater in 1852, a donation land claim, and there are other donation land claims which were taken around in the neighborhood of Springwater that he knows of. That is an old settled part of Clackamas County. There are 260 acres of his father's donation land claim in cultivation now. He owns the east half of it himself. He has 130 acres, and the other 160 acres below has about 130 acres in cultivation. There is a railroad which runs to Cazadero, and he is three and a half miles south of Estacada, and Cazadero is east of him about two miles. They ship their produce to Portland from Estacada. There is no shipping point at Cazadero. That railroad used to be known as the O. W. P. but it has changed

hands and he does not know just what the name of the road is now, but he understands that the Portland, Railway, Light & Power Company has bought it. There is a power plant at Cazadero. It is quite a large plant. Referring to his statements about helping his neighbors herd cattle a few years ago, they would turn out a few head of stock cattle on the range and let them go back up southeast towards the foot of the mountains. These cattle ran clear up on the mountains, and they range all the way from Springwater ten or fifteen miles, and would range over quite a lot of Government land that had been taken up, where the parties had just fenced three or four acres, and the rest was laying outside, and some railroad land, and some school land. These unfenced lands out there used to have quite a lot of timber on them, that is, up close to the foot hills of the mountain, but down off the foot hills there was scattering timber, and more or less underbrush, and a good deal of old rotten logs that were laying down and had been down hundreds of years. There are some saw mills, not any large mills that cut very much timber around that vicinity, and they locate themselves where there was just a small bunch of timber. There was not timber enough for a large mill. The demand for timber lands in his neighborhood became pretty active about ten or twelve years ago. He does not know much about any increased demand because there is very little timber in there. There is not enough to make it an object.

Whereupon on redirect examination witness testified that he bought a small tract from the railroad com-

pany once, containing about 29 acres. He bought the same piece that John Zeek contracted for after he had left it, and he thinks he paid $7.00 an acre for it. This railroad line that he lives on is an electric line running from Portland. It is 33½ miles from Portland to Estacada, and there is an electric line running out to Estacada. This electric line runs clear above Cazadero to the North Fork of the Clackamas; that is, it is graded there and the track laid almost to the North Fork, and it runs from Portland in the neighborhood of forty miles. Springwater is thirty-seven miles by the railroad; that is, thirty-three and a half miles from Portland to Estacada, and three and a half miles south to Springwater, and the lands would be about forty-seven miles from Portland, that is, the outside limit of these lands to the foothills, would be about forty-seven miles from Portland. There is some railroad land laying southeast of him on Clear Creek, and some railroad land lying on the south side. There is an eighty lying on the south of this piece he bought from the railroad people. That land has a little patch of second growth, pretty good saw timber on it. About half of it could be cultivated, and the rest would be a pretty good little bunch of timber, and would make good pasture after it was logged off. He believes that the rest of these tracts that lay below the foothills, off of the side of the mountain, that fifty per cent of them could be put in cultivation and farmed. Of course there are canyons running through that would be too steep, but on the benches and up on the ridges there could be farmed, he believes,

fifty per cent of it. The railroad land down on Clear Creek, of course that lay, quite a lot of it, on the hillsides. There could not be quite so much of that farmed, but it could be worked into pasture land by burning off and sowing with orchard grass and timothy, etc. There is no railroad land adjoining him at the present time. There used to be some land there adjoining him that Mr. Bonney bought right over south of him, a forty, and that forty joined the 29 acres that he bought. Mr. Bonney used to own it. A man by the name of Mr. Miller bought that forty and the 29 acres from him. The title has passed from the railroad company, and Miller has made a good little farm of it. The demand for timber commenced about ten or twelve years ago. People paid no attention to timber in that section up to about ten or twelve years ago, and then they commenced to want to get hold of a piece of timber land. The people who settled on the even sections burned the timber up in every possible way they could, to get rid of it. That community where he lives was generally a timbered section, had scattering timber over it. They had no prairie land in that county at all. They had timber scattered all over their farms. There has been an increased demand for agricultural lands the last ten or twelve years, and the price of agricultural land during this period has increased materially. There is a good demand for lands for settlement purposes, but there is not very much land for them to get hold of any more.

Whereupon on recross examination witness testified that free from buildings, his land is worth $100 an acre.

The average value of the unimproved land out there, taking it as it runs, say for four or five miles east of Springwater, and four or five miles south of Springwater, eliminating the improvements, will run from $15 to $35 an acre. He is seventeen miles southeast, almost east, a little south of east, from Oregon City.

Whereupon A. W. RIGGS, called as a witness on behalf of complainant, being duly sworn, testified that he is sixty-three years old, and lives 2.9 miles from Canby, which is situated in Clackamas County, Oregon, and has lived in Clackamas County sixty-three years, except about seven months at Hood River and a few years in Portland when he was a child; his father settled on 640 acres within a mile of the river at East Portland in 1847 or 1848, or somewhere around there. He dug three wells to get water, and had to pack water from the Willamette River for a mile, and so left the place. He has been farming most all of his life, in the neighborhood of Canby, and he is pretty well acquainted with the farming conditions of Clackamas County, Oregon, and the products and stock that they raise, and the ability of the land to produce. He notices Canby on Defendants' Exhibit 259, and he could hardly tell the unsold lands of the company marked in green on this map, Defendants' Exhibit 259, but he has 160 acres in section 12, township 7 south, range 2 east, on Cold Creek, which is not used very much for the reason that there is not very much of a settlement in there; but they use it for grazing purposes and strawberries and all kinds of fruit. He bought 160 acres of a homestead for $2.50

an acre, six years ago last January, and then sold it the other day for $10.00 an acre. That land was burned land, he calls it. He thinks they said the fire ran through there in 1849, and the timber is getting pretty well rotted. There has been no timber on that part of the land that is worth very much. There is some piling on it—there is timber there a foot and a half or two feet through, now, but not on very much of it, just in places. Of the 160 acres he bought, he thinks there could be about seventy-five per cent of it rendered suitable to cultivation, and most of it around there could be rendered suitable for cultivation. One might drop over to the Molalla Canyon, and there is a whole lot of that, that is not worth anything excepting for pasture, it is too steep. As to saying that he is acquainted with the railroad land, he could not say, because he does not know what sections are railroad land, but he has been all over the mountains in that vicinity, hunting elk and deer, and he is acquainted for several miles around there, some four or five miles, pretty well, and he would judge at least one-half of it is taken, the even sections, homesteaded. A man right south of him had a homestead of eighty acres; that is all he could get in one body, and there was another eighty acres he thought he could get after he homesteaded this. They told him he could take two eighties, or hold one at a time, but he said another man jumped the other eighty acres. He homesteaded that, and has proved up on it, and the most that he raised of any value was strawberries. Last year on about half an acre he had sixty crates of straw-

berries, and sold them at $1.50 a crate, at Soda Springs, seven miles, and he said they turned right around and sold them to a man who came from Portland in an automobile for $3.00 a crate. This land produces other products than strawberries. There are settlers living in this community; a few settlers around there, and the reason there are not more is because they cannot get the railroad land, and there is no school. This man east of him had to move out to school his children, and he was afraid he would lose his homestead. He had five children there and it is four miles to any school. They raise on these homesteads, in this settlement, mostly hay, for the reason that they have mostly stock. There is no threshing machine comes in there to thresh what little they raise. They raise hay and such as they can feed to their stock. He knows of railroad land there; he knows of one forty acres that could all be cleared, it is easily cleared—quite a lot of open land already to plow on it. This homesteader plowed part of it and raised hay for his stock. There is but little land cleared on the farm there that witness owned, in township 7 south, range 2 east. He bought it on account of his stock. His grandson went up there one summer and cleared an acre and a quarter of land without a stump on it—flat land, as good land as one ever saw; nice flat land, bottom land. It was a homestead, but there was not more than an acre cleared when it was proved up on. They had fenced it with wire in order to keep stock there. The title passed from the government to that land during Cleveland's administration. He would think on an

average, generally speaking, that seventy-five per cent of the land in that vicinity, if it was cleared up, could be cultivated, but it is just like other land, it is hard clearing. There is a burn there, just this side of the burn is green timber, and he is just in the edge of the burn. There is 640 acres of railroad land just this side of his place. Six years ago there was a time when people commenced thinking they were going to get the land and they all squatted and put notices on it. That land is still timbered. There are open places where they could put in garden or a little stuff, but it is timber land. It would not pay a man to go on that timbered land and make a home on that land in that township. It would not pay him because he could not live there. There is too much timber, and to cut that timber and waste it, would not pay him. He thinks this is in section 1, township 6 south, range 2 east. The land there is good—the land is number one, and could be cultivated if it was cleared. He thinks very nearly every bit of it could be cultivated. That timber land has no grazing on it—it is in the green timber. All the grazing part is out in the burn; then there is so much fern grows that there is not a great deal of that. That is what he said about grass. This mesquite grass has to be sowed. On the place he bought there is quite a lot of grass in through there, where they had stock. It would be good for sheep, but there is a heap of it just fern and logs. There is fern up there that grows away up high, measuring nine feet long, which prevents the grass from growing. The cow has to wade right around and knock

that fern around to eat the grass. There is lots of grass among it in places. The soil, most of it, is good. The only thing against that country is, it is up and down hill, and the stone on those steep places, it is, rocky. In that timber, there is good soil. It is not any harder to clear than some other land was. It is not any harder to clear than right here, he thinks; his father was here, —meaning East Portland,—when this was all timbered. He tried to purchase a piece of this railroad land down near his home, forty acres, but did not get it. The railroad company said it was not for sale, and they would not give him an option on it. They wanted him to write to them and advise them as to the quality of the land, and he did that when he wrote to them. It is forty acres of land on the Molalla River, between Molalla and Mill Creek, and has small timber on it. It has been skinned of the timber by settlers. One would cut in on it a little ways and another one on the other side, until there is not much left only second growth timber, but still it has good second growth timber, such as piling, and cedar for telephone poles, and cotton wood. He never took up a homestead. He filed on thirty acres once, sold the improvements to another fellow and threw it up. That was all the land there was in the bunch, thirty acres. That was in the settlement there where he lived.

Whereupon on cross- examination witness testified that the 160 acres that he owns out there is in section 12, township 7 south, range 2 east. He does not remember exactly how long ago that place was home-

steaded, but it was proved up in Cleveland's administration, about thirteen years ago. He supposes the man lived on it five years. It was a homestead. He supposes that a good part of the 480 acres in section 6, township 7 south, range 3 east, and 80 acres in section 32, township 6 south, range 3 east, and 40 acres in section 8, township 7 south, range 3 east, a good part of that was government land at that time. He thinks the southeast, or the northeast quarter of that was taken before his was, by a man by the name of Bonney. There is no government land there that is of any account now; it is no account because it is too steep. Section 6, township 7 south, range 3 east, 480 acres, is on the streams where it is too steep. His land sets in between two streams, and is comparatively more level there than where the land breaks over on to the Molalla and Butte Creek. Where it breaks over on the side it is too steep for a man to plow. He could not farm it, but could use it for grazing land, that is all. If this government land is there now, it is not worth taking; people could not take it and make a living on it. These people that five or six or seven years ago tried to get on to a railroad section there, three or four of them going out there —did not build cabins, they just put up notices, except one fellow built a cabin and lived there for a year and then moved off. They thought maybe they could homestead the land if the railroad company lost it; that is, if the railroad company lost the land, they thought they would get in there and settle on it. One fellow was on a piece of that section at that time that was pretty nearly

all timber, but there is some open land on it; three or four acres of open land in spots, it is flat open land; one could plow it. The section is pretty well timbered —saw timber. He does not know the price of timber there. His father-in-law owned a piece right adjoining that land, but he never would tell him what he got for it. He does not know what the stumpage is worth, or what they pay a thousand for good saw timber. He is not acquainted with the timber business and never dealt in it. That was pretty good timber there. The quarters that did not have any timber on were pretty well picked out—that was the trouble. They selected this section, where three or four people put up notices on it, about the time this controversy commenced as to whether the railroad could hold the land.

Whereupon on redirect examination witness testified that this section of land that he mentioned as having notices posted on it, was section 1, township 6 south, range 2 east, but he does not know anything about the stand of timber on it. He never cruised any and never knew anything about that business. His father-in-law homesteaded a piece right adjoining him that is as timbered as it is. There are some settlers living in there, in township 7 south, range 2 east. That 640 acres was pretty well covered with timber, but from his place out the other way, where the settlers are, it is all burned country, no timber of any account. His place has the best second growth timber that there is in there. There is quite a lot of piling on the creek bottom, but most of it is barren land—nothing but willow brush and fern. The

burns do not destroy the soil. Burned land is good land, if one gets in and cultivates it.

Whereupon on re-cross examination witness testified that he does not know when the burn was, but the people tell him that it was in 1849, but he has timber there that is from six inches up to two feet through. These trees that are two feet through are very tall. They may be one hundred feet or more than one hundred feet. He thinks they have all grown since the fire. He would say that he had on his place probably thirty-five or forty acres of fir timber. He knows that this fir timber does come up, and inside of sixty years makes saw timber.

Whereupon on re-direct examination witness testied that his knowledge as to the growth of the fir timber is limited to this section of the country where he has lived. Large saw fir timber generally used for logging purposes, does not grow in any such length of time as that, but this second growth will make saw timber, that is what he means. Now, there at his home, he knows that when that brush was only so high, he could drive over it with a wagon, and now they have made saw timber out of it. They had a little mill in there and sawed up a lot of this timber and made lumber out of it, and made fencing and rough lumber. Some of those trees were about two feet in diameter. He knows that to be the case because he saw wagons drive over them. He does not know how much the general conditions as to the natural formations and possibilities of agriculture, and the timber conditions, since 1870, have changed. He does not know that they have changed; he could not

say that they had. Timber growth always, since he has been there, is just the same. Whenever one makes a burn and leaves it, it is soon growing up into fir brush. The general conditions in that country have been the same since 1866. He remembers well when his older brother slashed a piece of land, and now witness can show one tree two feet through on it. That has always been timbered country during that period. It seems as though that burned country does not set to fir like it has down in the valley; he thinks it has been burned off so many times. That timber of his up there, is on a creek bottom, and the rest of the land up there has no fir on it to amount to anything. The fir timber grows in the valley where he lives that he knows of, but this up in the mountains is on a creek bottom, where it is rich beaverdam—would be called beaverdam land; it is real black land.

Whereupon on re-cross examination witness testified that he thinks that this burned area up there has been burned over a good many times, and that probably kept the timber from growing up.

Whereupon W. R. LAMB, called as a witness on behalf of complainant being duly sworn testified that he is forty-seven years old, resides near Medford, Jackson County, Oregon, and has lived in that County about thirteen years, and has been farming most of that time in the Big Butte Country and on the North Fork of Little Butte and near Medford and owned lands there. He first lived and farmed in the Big Butte country.

His land was in section 26, township 34 south, range 3 east, where he had two hundred acres. He took up a homestead in Jackson County, he thinks in section 26, township 34 south, range 3 east. He lived a little while at Talent before he went up there to the Big Butte place; he took his homestead when he went up into the Big Butte country right away, it was 160 acres. He had a timber forty beyond there about a mile which he filed on under the timber and stone act. He lived on his homestead there about four years. The character of this land that he farmed there was reddish like loam; it was partly timber, partly open country, mostly timber. He cultivated about 25 acres, as near as he could tell, not all on the homestead, right close to it though. Part of the land required clearing and part of it did not before it could be plowed or cultivated, but not all on his own land. He had a family and earned a living there and supported himself and family on that land. He left that country on account of school for his children. When he first went there, there was no school and they organized a district and built a school house which burned down. They built another and it burned down. There is railroad land all through that country, the odd sections. There was difficulty in getting a sufficient number of children to organize and maintain a school in that vicinity at first, but they had enough children by going a good long distance for school. The reason he left his homestead was in order to get better facilities for his children than there were in that vicinity. The school house burned down and he had no way of

educating his children. He should have said two school houses burned down. He sold the land and does not know if it is still farmed as he has not been there since he left it five years ago. There were settlements in there, people living in that community when he left. He farmed on Little Butte Creek, on the North Fork of Little Butte. He farmed near Medford, in Jackson County and a little near Talent before he went up into the Big Butte country, all in Jackson County. His experience is sufficient to acquaint him with the possibilities of farming and the farming business in Jackson County in the vicinities where he has been acquainted. Farming has been his business practically ever since he resided in Jackson County. He worked a short time in the sawmill but very little. His homestead was in section 26, township 34, 3 east, and referring to "Defendants' Exhibit 259" he does not know that he could tell just how much of the land in the vicinity of section 26, township 34, range 3 east he has been over, but he has been over an area, he thinks, of ten miles, from there to Butte Falls and perhaps five miles south and east of the land he is speaking of; that is east of this township 34, 3 east. He could not tell exactly the boundary lines, how far he was, referring to township 34 south, range 3 east. He is fairly well acquainted with that country in through there, four or five miles either way from where he lived on his homestead and ten miles to Butte Falls. Butte Falls was south and west of there. He is fairly well acquainted with township 36 south, 2 east. Lake Creek runs through that township and Little Butte

Creek according to this map, "Defendants' Exhibit 259." He has been all up and down the North Fork of Little Butte Creek. Lake Creek is on the forks between the North and South Fork of Little Butte Creek and he is acquainted with the land on the North Fork of Lake Creek and has been back to Soda Springs and is fairly well acquainted with the lands in the vicinity of Soda Springs, but has not been in there as much as he has around Lake Creek. The County road goes right to Soda Springs. He has been off the road along towards Soda Springs and has hunted through that country and has run stock through there some, not very much, not as high as the Soda Springs but he has around Lake Creek. He had a farm in the vicinity of section 34, township 36 south, range 3 east, which was two miles up the creek from Lake Creek, up the North Fork of Little Butte. Lake Creek is the postoffice. Forty acres of the land was railroad and forty was school land. He does not know what the source of title of the balance of the land was. The farm contained 300 acres. He has a farm near Medford, about a mile and three-quarters from the depot of the Southern Pacific Company at Medford. He thought that land had been taken up some years ago, it is an alfalfa ranch that he is living on at present close to Rogue River. He is not much acquainted west of Eagle Point, but east of there he has been through that country. The map shows Eagle Point in township 30 south, range 1 west, and shows tracts of railroad land in that township, comparatively small tracts. He has been around Brownsboro and is fairly

well acquainted in that vicinity. He would not know railroad land from any other there as he had never had it mapped out to him. He has been around by Central Point, near Jacksonville, close to Medford, north of Medford. He is fairly well acquainted about Jacksonville, which is the county seat of Jackson County, about five miles west of Medford, something like that. He has been to Ashland and about seven miles south of Ashland on the railroad, as well as on the wagon road, only years ago on the railroad and he has been on the wagon road from Ashland. He is acquainted with the lands in the vicinity of Butte Falls and he has been up Willow Creek east of Butte Falls. He has not been over the lands in that vicinity away from the bed of the creek, but has just been up the road and it was sufficient to give him a knowledge of the lands in that vicinity. As far as he could say there is a great deal of timber in through there, in the area he has described around his homestead, there are open glades and there is a large amount of railroad land in that vicinity. He believes about half of the country is railroad lands. In their raw state, the way these lands are at present they are good grazing land.

Whereupon witness testified:

Q. What percentage of those lands do you think, in your opinion, would be suitable for settlement purposes, that a man could go on there and take up 160 acres of land for the purpose of making a home there?

A. You mean just taking the country over; how much per cent of the quarters—quarter sections?

Q. How much per cent of the 160-acre tracts, regardless of whether they were quarter sections. They might be in a T-shape or L-shape, 40-acre legal subdivisions of land contiguous, lying contiguous, 160 acres.

A. I would think about 75 per cent.

Q. How much farm land would you think on an average a man could get from the lands?

A. Well, I would think about 60 per cent of it could be farmed after it was cleared.

Q. Now, in this other territory out from Lake Creek that you are acquainted with—

Mr. Fenton: That is on Little Butte.

Q. Little Butte Creek, on the north fork there, out from Lake Creek, the Soda Springs country?

A. That is grazing land a great deal of it through that country.

Q. Well, what per centage of it do you think would be suitable for settlement purposes, that is, for a man to take 160 acres for the purpose of making a home there and farming it?

A. I would think about the same as it was on the other creek, about 75 per cent.

Q. How about the average of tillable land?

A. It won't run as high a per cent, I don't think, through there; that is, it is hilly more—it wasn't quite as level as it was up in the Big Butte country. A man could farm it, but it wasn't as easy farmed as it was in the Big

Butte country.

Q. How does that land compare as to having any timber on it with the other country that you are acquainted with?

A. That hasn't got near as much timber as it has in Big Butte. The timber is scattering.

Q. Now, are there lands of similar character, that is, that have been timbered lands there, are any of those lands being farmed in these viciniites?

A. They are.

Whereupon witness testified that they raised in these vicinities wheat, corn, well he would say all kinds of small grains that he has ever seen grow, stock, hogs, cattle, horses, all kinds of poultry, and there are settlers living in that community who have gone into the timbered country and made farms on lands similarly situated.

Whereupon witness testified:

Q. Mr. Lamb, in your opinion, what has been the effect, if any, of the railroad company's failure to comply with the conditions in their grant in failing to sell the land in tracts of 160 acres to actual settlers for $2.50 an acre and in selling in large tracts to big companies, and in withdrawing these lands from sale?

A. Will I answer it?

Q. Just go ahead and answer it.

A. It has hurt schooling, hurt the population of the

country.

Q. By hurting the population of the country, do you mean—

A. Kept settlers out of there.

Whereupon witness testified that he applied about five years ago to purchase land from the Oregon and California Railroad Company, being the southwest quarter of section 27, township 34 south, range 3 east. There was a great deal of timber on most of it, some open glades in it, free soil, reddish colored loam, and was well situated for agricultural purposes. There was good grazing land on it. He had farmed land adjoining this and had raised two tons of wheat hay to the acre adjoining this land of the same general character. The lands that are not adapted to tillage and could not be plowed would raise good grass and could be used for pasture land.

Whereupon on cross-examination witness testified that he took his homestead April 27, 1903, lived on it four years, commuted and paid up at $1.25 an acre. It was in section 26, township 34 south, range 3 east, and was not on a creek but close to Camp Creek, a branch of the North Fork of Big Butte. It was about ten miles by wagon road from his place to Butte Falls. There were about five acres in cultivation on his homestead when he left. His five acres was bench land. It was not on running water. His improvements were not on this five acres, but right by it. His improvements consisted of house, barn, fence, wood shed, smoke house;

his house was 16x24 with a kitchen 14x16. The kitchen was a box, and the balance of it which he made would be called frame. He cut the poles, used studding, split out pieces for the sheeting and used what they call shakes or clapboards in that country. The shakes were made out of sugar pine. The main part of the kitchen was made out of sawed stuff and the rest was hewed out. The kitchen was boxed and had studding and the house was ceiled with lumber on the inside, the main house. He floored the house with lumber. He built his barn out of hewed pieces and sided it up and covered it over with shakes. It was all made by himself or hired men on the ground. The five acres was originally partly open. It was a deadening and he could not tell how much timber he cut off of it. He cut the snags as they called them, or dead trees down and rolled them up and burned them. This five acres was a deadening and it was practically clear. It had been burned over timber land. The old snags and logs and things of that kind were left from the fire and were still there. He lived on that place four years. His family consisted of himself, wife and four children.. He did not have any hired man during that time, and did all this work of clearing this five acres himself. He left the stumps and burned around them. He sowed wheat on this five acres. He could not tell how much wheat he raised in any one year on his five acres, he mowed it for hay and did not thresh any of it. There were no threshers in that country. It is fairly well up in the mountains but he could not tell the elevation, but it is a good deal higher than Medford, but he could not say

how much higher. He could not say whether it was in the frost or below the frost line. He planted some young apple trees there but they were not old enough to bear when he left that country. He planted potatoes for his own use and had no frost early in the fall. He did not raise anything on the place to sell. He worked outside some, carpentered some and worked for some of his neighbors. The twenty acres that he farmed was about a mile away, something like that, he rented that. He thinks that twenty acres was on a homestead and was on a creek called Freeze Creek, a little branch, there was water in it in the winter time but none in the summer. This farm of twenty acres had been cleared out of the timber, and he does not know how long it had been cleared, but he farmed it. This twenty-acre tract was not on the stage road, there was a building on the land. He rented this place from Fred Rapp, who he thought had owned it for about seven or eight years. He paid one-third of the wheat hay, which yielded about two tons to the acre, as rent. He had some horses and four head of cattle. The cattle roamed out over the country around there. He ran his own cattle, turned them loose at the homestead and let them go, but they would not go far. He also had some calves. He received $22.50 an acre for his homestead from the purchaser, Woodbury of Kalamazoo, Michigan, whom he supposed were timber people. There was scattering timber through his homestead, except the five acres he cultivated. He does not know what the purchasers bought his homestead for. He never made any cruise or estimate of the timber on his home-

stead. He did not think that he had a good timber quarter section of land. He does not know what a merchantable timber quarter section of land would be. The forty acres that he took under the timber and stone act was not adjacent to the homestead but was about half a mile from the nearest corner of it. This last mentioned tract was timber land and he sold it to Woodbury. Woodbury resides in Kalamazoo, Mich. He sold this land four years ago last March. He commuted on the homestead about 1906 or 1907, he does not remember. He had no thought of selling the homestead to Woodbury, before he made his proof upon it. This sale was attended to for Woodbury by B. H. Harris, who paid for the land through the Medford National Bank. Harris was a sawmill man up on the Big Butte, but he does not remember the name of the company. He had heard that Harris was operating for W. S. Dewing, Kalamazoo, Mich., and had heard that Dewing has a lot of timber lands on the Big Butte. He had never seen Woodbury, who bought his homestead. He has not been to the homestead since he sold it and does not know whether anybody lives on it now. There was fir and a little sugar pine on the homestead. Most of this timber is saw timber. The two school houses that burned down were built by tax. He does not know how the railroad lands were taxed. They levied a certain amount of tax, so many mills tax and built the school houses and he supposes whatever land was in the district had to pay a proportion of the taxes. The last school house burned down the fall before he sold his homestead in March or February. He farmed on

the Little Butte, owned 320 acres there which he purchased from a man by the name of Peck. Part of this land was a homestead, forty acres railroad land, forty acres school land and he does not know what was the origin of the title of the remainder. He paid $3,000 for this land and owned it over two years and sold it for $5,000 to Mr. Farrar who is in Portland at present, but he does not know where he makes his headquarters. He did not know where Farrar lived when he purchased this land, but does not think that he was a timber man, or dealing in timber, and did not know whether Farrar lived on the place. In this 320-acre tract there are 60 acres in cultivation and part has not very good timber on it and would hardly be called timber land. Some of it was desert land which was good for pasture.

Whereupon witness testified:

Q. What kind of soil is it?

A. Part of it was what we call sticky soil, part free soil.

Q. And rocky?

A. Part of it was rocky.

Q. Hardpan that you can't get through without pretty nearly blasting?

A. Some of it was; some of it was not.

Q. A good deal like the desert out there north towards Eagle Creek from Medford, that they are trying to break up now with these plows that go below the hardpan?

A. Yes, and they are making good ranches of them.

Q. A Spokane concern is trying to put water on it, and put out a few trees, and sell it to suckers?

A. They are making a good living on it. If you had attended the Jackson County Fair this year you would have seen good products grown on it.

Q. What made you sell this 320 acres of land?

A. Well, I don't know, the same as anybody else would take a notion to sell anything.

Q. Now, you say that in your judgment sixty per cent of these railroad quarters, in the vicinity of your homestead and in the vicinity of this farm on Little Butte where you are acquainted, could be farmed after it was cleared?

A. Yes.

Q. Well now, it would have to be cleared of the timber before it could be farmed, wouldn't it?

A. And brush.

Q. Well, I mean the timber that is on it would have to be cleared, too, wouldn't it?

A. Well, a man could farm around the stumps if he wished, raise grass.

Q. I know, but wouldn't he have to cut the trees down and cut the timber and logs?

A. On North Fork it ain't very heavily timbered.

Q. But just answer my question without arguing.

You would have to cut the timber down, wouldn't you, before it could be used for farm purposes?

A. Part of it could and part of it couldn't. Part of it is already clear.

Q. How do you mean clear?

A. I mean nothing on it—glades open, what we call open glades in that country.

Q. How large an open glade is there on any one of these quarter sections?

A. Section 15, township 36, 2 east, there must have been five or six acres adjoining the forty that I owned clear.

Q. That has an open glade on it?

A. Clear, clean, no brush on it.

Q. What kind of stuff is there on it—anything at all?

A. Grass.

Q. What kind of grass?

A. Wild grass.

Q. What kind of soil?

A. Sticky.

Q. Any rock?

A. A few.

Q. Is it steep or level?

A. Neither one. It is just a gradual slope.

Q. Now, how many settlers, Mr. Lamb, can you name that lived within a mile of your homestead, that lived on the same character of land, and did not live on the creek bottoms and on land that had been settled years ago? In other words, how many settlers within a mile of your place clear around can you name that lived there when you were there?

A. Mr. Aldrich. Very few, because the railroad took a mile out of each corner, and we couldn't get settlers very close to us.

Q. Now, these people that lived there, did they take homesteads?

A. Mr. Aldrich did.

Q. When did he take his homestead?

A. The same time I did, I believe.

Q. Has he sold his place?

A. No.

Q. Is his timber land?

A. Partly.

Q. Now, name someone else within a mile on either side clear around. Take a two-mile circle. I mean a circle, and leave your place out—

A. Two mile?

Q. Yes, two miles, a mile on each side.

Mr. Rabb: It is a mile on each side. The radius is a mile. A mile from your place.

A. Mr. Byden.

Whereupon witness testified that Byden relinquished his homestead but not to a timber company. He thinks he relinquished it to some party in Medford, but does not remember the name and does not know what became of it, or how much was received for it. The land that he applied to purchase from the Railroad Company, the southwest quarter of section 27, township 34, 3 east, was about half a mile northwest from his homestead and part of it had timber on it. He made application to the Railroad Company to purchase this land. He and one of his neighbors wrote to the Railroad Company and he does not just remember where they wrote to. He had his application recorded in Jackson County. He offered $2.50 per acre to the railroad for this land, and it was as good a quarter section as the homestead that he sold.

Whereupon witness testified:

Q. If you had got that for $2.50 an acre you would have got it for $400, and then you could have sold it for $3600, couldn't you?

A. I suppose I could have if I had wished to have sold it.

Q. You looked around, did you, to find a good quarter before you made your application?

A. Yes, a good average quarter.

Q. Yes, you wanted to find a good piece of timber land, didn't you?

A. Well, I wanted to get a piece of land to run stock on.

Q. And you would take the timber if they would throw it in, wouldn't you?

A. Oh yes.

Q. And you wanted to run stock on it while this timber stood? Wasn't that the idea?

A. Well, I might slash some of it off.

Q. Yes, a little, enough to build a cabin.

A. I don't know what I would have done with it until after I had got it.

Q. You didn't move on it, did you?

A. No.

Q. You didn't make a cabin like some of these Lafferty clients in this record?

A. No. I didn't think there was any use when they wouldn't sell it to me.

Q. Although you went to the trouble to have them file your application and make your contest in the records of Jackson County?

A. Yes, sir.

Q. You were advised to do that?

A. I was told the railroad company had agreed to sell it to settlers for $2.50 an acre, that I might settle on it.

Q. You didn't want to settle? You wanted to run your cattle over it?

A. Wasn't that settling on it?

Q. Is that the way you wanted to settle on it?

A. I would have moved on it if they had let me have it.

Q. The timber would have paid you to move on it for a while, wouldn't it?

A. The timber would have paid me to move on it for a while?

Q. I say, honor bright, wouldn't it have paid you to move on it for six months to get the timber?

A. Yes, it would have paid me to move on and hold it for five years.

Q. To get the timber, that is the fact, isn't it?

A. Ask that question again, won't you?

(Question read.)

A. Not only to get the timber. I would have liked to have the land.

Q. You would have liked to get the timber too?

A. Yes, I would have taken the timber along with the land.

Q. As a matter of fact the real reason you applied for that quarter section over a quarter section that didn't have any timber on it was because there was timber on it

—now, isn't that the real fact about it?

A. It would have been hard to take a quarter in that section that didn't have any timber on it.

Q. I know, but you were not looking for a quarter section that didn't have any timber on it, were you?

A. I couldn't have found it in that country.

Q. I know, but knowing that—you knew it was all pretty good timber, didn't you?

A. It was not all timber. I testified there were some open glades on it.

Q. I understand, but the quarter section that you applied for, and offered $2.50 an acre for was a pretty good quarter section of timber as that timber runs in there?

A. Yes.

Q. And you picked that out because it had pretty good timber on it, didn't you?

A. Well, I don't know that I picked it out any more than I would a good many other quarters. It wasn't any better than some other quarters.

Q. I understand, but you picked that quarter section out because it had good timber on it, now, didn't you?

A. Well, it had good land, too, on it.

Q. I understand, but answer my question. Didn't you pick that quarter section out because it had good timber on it—yes or no?

A. Yes.

Q. That is all.

A. Partly, I might answer.

Whereupon on re-direct examination witness testified that during his residence in Jackson County he had been engaged mostly as a farmer but never engaged in the timber business. At the time he took his homestead he had no land, no home, and wanted a home. He purchased the other farms mentioned for the purpose of making a living off of them by farming and raising stock. The sticky land referred to by him is black land and is a productive soil.

Whereupon upon re-cross examination witness testified:

Q. Will a plow scour in this sticky land?

A. Not good.

Q. Don't you know you cannot drive two hundred feet with a plow in the ground in that sticky land until it chokes up and you cannot get any further?

A. No, I don't.

Q. Fills the mold board so it is clear and smooth and you cannot keep it in the ground?

A. Oh yes, you can.

Q. Do you tell me that that sticky land, that the plow will scour in it at all?

A. Not scour good.

Q. It won't scour at all, will it, unless it is wet—half water?

A. In the fall of the year, when the first rains take place it is as good as any land we have got.

Q. Do you know that land over about Jacksonville belonging to the Hanley estate that you cannot get a plow to stay in the ground unless it is wet as water?

A. Yes, you can.

Q. That is sticky land, isn't it?

A. I am not acquainted very well with the Hanley ranch.

Q. How many acres of that sticky land have you tried to plow?

A. I don't know as I could just tell you that.

Q. You have never had very much experience if you think a plow will scour in it.

A. Yes, I have. I say it won't scour good in it—I don't argue that at all.

Whereupon on re-direct examination witness testified that the Rogue River Valley is on sticky land. This soil produces grains, fruits and vegetables and is used for general farming purposes in that county. The land in the vicinity of his homestead that was in cultivation and that which he cultivated was good farming land. Nearly all of the lands that were cultivated in that section of the country contained more or less timber. He was up in that country five years ago and people were living up

there, farming timbered land which was cleared and slashed, part of it and part of it was open glades. Nothing would prevent the farming of this land except the timber that grows on it, except where there were patches that were rocky, but the bulk of it was very easily cleared of rock after the timber was off. This would be a good farming country after the timber is removed. It will take some work to clear the timber of course.

Whereupon CHARLES RANDLES, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-five years old, resides at Lake Creek, Jackson County, Oregon, and has lived in Jackson County since 1881. He was born in Redding, California. For the last twenty years he has been engaged in riding after stock. He ran a farm, along with stock raising, which was located on the south fork of Little Butte in Jackson County, Oregon. Lake Creek is a post-office and there is a stream there that is called Lake Creek. The post-office is right at the mouth of this creek and he should judge that that ranch is about twenty-five miles from Medford. When he came to Jackson County in 1881, he came with his father. He was at that time fifteen years old. He moved from California to Jackson County with his father and mother. His father and mother lived in that Little Butte country—Lake Creek country as it is called. They settled there and his father took a homestead on the south fork of Little Butte creek, about fourteen miles south of Butte Falls. His father and mother lived there until twelve years ago. They proved up and got a patent to the land. He was

not at home much after he was seventeen years old. He rode after stock, worked over in Harney Valley, and some west of the Cascade mountains.

This homestead of his father lay part of it on the creek, part of it was hill land, and some scattering timber on it, principally pine, some fir. Some of it was good sized timber and some small. It was scattering hill timber. Verp little of it was saw timber. His father cleared and grubbed the land out of the creek bottoms, cleaned them up, put them in garden stuff, alfalfa, and so on, and they cleaned up about seventy-five acres of brush and timber land. They lived there from 1881 up to twelve years ago, which would be about nineteen years.

His father went from Jackson county to Yreka, California, and stayed a while, and at the present time he is in Medford.

The land that his father cleared was cultivated and put into alfalfa, a good part of it, a portion of it raised potatoes, onions, beans, corn, oats, wheat, barley, all kinds of grain. That land is something about 1860 to 1865 feet in elevation, about the same as Ashland. Part of the land is sticky land, and the creek bottoms was land that had been made from time to time, sandy loam, and is good, productive soil. His father had about forty or forty-five acres in alfalfa there. He raised small grains on most of the balance of the land. There was some waste land on it, pasture land. The waste land was used for pasture. He had one hundred and sixty

acres, and then witness bought one hundred and sixty acres adjoining from a man by the name of Davis, which was all hill land. They then had three hundred and twenty acres of land there. He farmed a portion and pastured a portion of this land that he bought from Davis. It was in township 36 or 37, range 2 east. The nearest post-office was Lake Creek, about four miles east. He doesn't remember the number of the section, but it was in the southern part of the township, near the central portion. Most of the riding after stock that he did was in that vicinity, in the Butte Creek country on the head of Dead Indian. He became familiar with the country there in riding after stock that way. He had ridden all through that country. He was riding most of the time and had been over the lands quite a good deal and observed the extent to which the land is settled there, and has observed the use to which the land has been put there for the purpose of growing agricultural and horticultural crops to quite an extent. It is hard for him to get at the size of the country that he has been over, but he has been through the head of Dead Indian country, which is as far south as he is acquainted with the country, being about twelve or fourteen miles from Lake Creek, and he has been about twelve or fourteen miles north from Lake Creek as far as Butte Falls. He has been through the Butte Falls country, but he is not very much acquainted on Butte Falls but in the vicinity of Butte Falls. He has not been very much along the Rogue River. He is not much acquainted with the Rogue River country. He has been east of Mt. Pitt from Lake

Creek straight to Mt. Pitt, about twenty miles; he has been all through that country west from Lake Creek to Medford, which will be about twenty-five miles west. He has ridden after stock in there something like twenty years, and also in eastern Oregon. He has been at the business about twenty-five years, and he thinks he has put in about twenty of it in this section (referring to the places mentioned in Jackson county). He does not know in a general way where the railroad lands are situated in that territory. He never paid any attention to railroad sections or government sections. He knows as a whole, as a general thing how the country looks and the lay of it. The principal part of the territory with which he is acquainted in that territory compares very well with the land homesteaded by his father, and that he bought adjoining his father's homestead. There are settlers up Lake Creek about fifteen miles, from Lake Creek post-office. Some of these settlers are engaged in stock raising, some in farming, raising vegetables, etc. That is a pretty fair alfalfa country in there. On the south fork of Little Butte, most all of these settlers have their bottom lands in alfalfa. On the north fork, they raise mostly meadow, and on the hill lands they raise grain, hay, corn, wheat, oats, and all such as that. Take the land in general from Lake Creek for eight or nine miles east, and it is all good corn country, and wherever one can get the timber off and the land cultivated, one can raise good corn. That condition extends south clear through to Ashland, and all of that country and north in and about Butte Falls, which is as far as he knows

much about the country, that condition exists as far as he knows the country there. That country is a broken country. One comes to creeks; there will be canyons along there, and the side hills, and benches; there will be quite a draw which they farm, and then one would come on up to this level country and timber. Most of that level, flat country has good timber scattered over it, some heavy, some not so heavy. All of that land practically could be farmed if the timber were off. The land where the heaviest timber grows is about the same character as the other land. There is not much difference in the formation of the land in that section of the country.

Q. Now, speaking generally with reference to this large area that you have become familiar with, I will ask you whether that land is of such character and is so situated generally that it will support a settler, if it is properly cleared and properly handled?

A. Yes, I think most of those quarter sections they could get enough on them of land to support a family if they were properly farmed and cleared up—cleaned up and worked.

Q. Did your father support his family on that homestead of his?

A. He did. He supported about ten children on it.

Q. So that land will grow children as well as alfalfa, will it?

A. Yes, sir, it seemed to.

Q. Now, just in your own language state a little more definitely about how many of those quarter sections in that area that you are acquainted with would support a family if properly handled, Mr. Randles?

A. Well now, as to that you take the country as a whole, I will say, you know, of that, what I speak of as that base timbered land, I think that there could be about forty per cent of that would be agricultural land—just take it as a whole.

Q. Well now, what percentage of agricultural land does a settler need in the 160 acres in order to maintain himself, using the balance of the land for pasturage when it is good pasture land?

A. Well, if a man can get 25 acres of good land he will support a family on it.

Q. This tillable land, does it lie in large tracts, or is it distributed through the country there?

A. Well, it is distributed, pretty evenly distributed.

Q. Are there very many quarter sections there that could not be cleared and cultivated and maintain a family?

A. Not many.

Q. How many quarter sections out of one hundred, in your judgment, in that general territory that you have described, would support a family, if cleared and handled in the proper manner, take it on an average through that whole country as you know it?

A. Well, it would reach eighty per cent of them.

Q. Did your father clear his lands of the timber or was it already cleared when he went there?

A. There was a good deal of timber on it.

Q. How did you clear it?

A. Not so much timber as brush land, a good deal of brush land on the place my father had, and some large—quite large timber, cottonwood and all such timber as that, hazelbrush, salal brush, hawthorne and all such as that.

Q. How did you clear it?

A. Grubbed it out with a grubbing hoe the biggest part of it.

Q. Now, in testifying that that land would support a family, or settler's family, if properly handled, do you take into consideration the difficulties of clearing the land?

A. Yes, sir.

Q. Have you seen the land cleared down there?

A. I have seen quite a good deal of land cleared there. In fact there isn't a ranch right in my neighborhood there but what the greater portion of it has been cleared.

Q. Well, do you know why the balance of it has not been reduced to settlement?

A. Now, in regard to that, there is people would make homes there if they could buy this railroad land and buy it right, they could make good homes on it; but

they are kept out because it is withdrawn from the market.

Q. Well, this land that is withdrawn from the market and that is not settled upon, is there any difference between that land and the land that has been settled on?

A. Oh, as I said a while ago, it is just about the same character of land.

Q. I didn't ask you with reference to the land that is not tillable. How is that as to being grazing land, and what quality of grazing land?

A. Well, the principal part of that country is good grazing land; both timber and open land is good grazing land.

Whereupon witness testified, that the timber, when one gets pretty well back in the mountains, is principally white fir. When one gets a little lower down, there will be considerable red fir and pine. His father's homestead is now used for farming by Bonny Brothers, but right at present it has been turned back to his father. His father sold it to them and he had to take it back. It is still in cultivation. His father did not leave the place because he could not make a living on it, but got too old to farm any more and sold out on that account. Land is worth there, after it is cleared and put in cultivation, from fifty to seventy-five dollars an acre, taking a whole quarter section of land. Cost of clearing that land and putting it under cultivation depends altogether on the kind of timber and brush that is on it. There is some of that land that cannot be cleared, some rocky land that would

not pay to clear up. Take a quarter section, there might be portions of that land that would be too rough and rocky, but there is very little of it that would not pay to clear. That applies to land that has large timber on it, as well as that which has small brush on it. The heavy timbered land would be the most expensive to clear to get out the stumps. They do not clear the brush before they grub it, they slash it and they clear it different there. Some slash it down, burn it off, and then grub. Others grub and burn as they grub the brush out, and some use a stump puller, and some grub it with a hoe. There are all ways of cleaning it up. They blasted a good many of the stumps out in his part of the country, and some few have used the charpitting process, but they have mostly cleared by blasting. The principal part of that country there now will grow all kinds of small grain, corn, oats, wheat, barley, potatoes, cabbage, onions, beans, and all such as that, and fruit grows all through that country wherever he has been—such as apples, prunes, peaches—some parts won't raise peaches, but then the greater part of it will, and pears also. Blackberries, raspberries, strawberries, all kinds of berries like that grow good there. The quality of the fruit is just as good as they have in the main valleys there. The altitude at his father's place was about 1860 to 1865 feet, and the altitude gradually increases as one approaches Mt. Pitt on the east. He could not say what the altitude is about twenty miles east of this Lake Creek post-office,—that is, up about Fish Lake or next to Mt. Pitt. There are settlers about ten miles

from the summit of Mt. Pitt. The kind of crops that can be grown does not change very much when one gets into the higher altitude. They raise quite a good deal of stock in that country at the present time—a good many cattle are raised in that country. They raise hay to feed them in the winter, and turn them on the range in the summer—range them back in this Mt. Pitt country, all over from Lake Creek up to Mt. Pitt and all through there cattle are ranged, and the head of Dead Indian country is summer ranged. The land that is cultivated is fenced so that the balance can be used as range. Dairying business is carried on to a small extent there, but not a great deal. They are about fifteen miles from Eagle Point market, and about twenty-nine miles from Medford from where he is at the present time. He is now working for Mike Hanley at the Hanley ranch on the North Fork, about four or five miles east from Lake Creek. They grow meadow mostly on that ranch, meadow and fruit, they have a home orchard there but they do not market their fruit. They are engaged in stock raising and raise fruit for consumption on the ranch there. The roads between there and Medford are not very good. There is a wagon road east from Lake Creek to Fish Lake, which is fairly good. One can go over it with a wagon. There are a good many settlers up there in each township in that general country he has been describing, something like twenty or twenty-five in the back district, and down in the Lake Creek country all the land is settled with the exception of the railroad land.

Q. Do you know whether the holding back of the railroad lands has affected in any way the development and settlement of that country?

A. Oh, I think it has to a certain extent.

Q. How does it affect it?

A. Well, it keeps people out, that there is homes there that they could make homes on it if they could get hold of the land.

Q. It has been testified here in this case that there is not a quarter section of railroad land within this entire grant that would support a family, a settler and his family. Is that true?

A. No, I think that statement is a little off.

Q. As these other lands have been settled up, to that extent has that reduced the available range in there?

A. Why, certainly, it has reduced the stock range. The more they settle the less out range we have.

Q. Have you noticed any change in that respect during the twenty years you have been riding in there?

A. Oh, a great change, yes.

Q. When did this increase in settlement take place?

A. Well, now, in my country it has just gradually settled up. They keep getting back, you know, gradually. It has been that way all the time you know. There was no rush of settlement. It just gradually settled up.

Q. And that applies to this territory generally,

does it?

A. Yes.

Whereupon, on cross-examination, witness testified: that George Ratcliffe joined his father's place on the east when his father went in there. There was also Swingle up Lake Creek, and then just above there was his father's brother, Sam Randles; then came Tongue, a German, and then just across the creek was Peck, and then came his father's place and George Radcliffe, and then Perry Farlow at that time. Those people were all there and were on homesteads. These homesteads were not on Lake Creek at all, but were on the South Fork of Little Butte Creek. They settled on the creeks in those early days because it was natural that a man would go along a creek to settle where he has a chance. The land along the creek bottoms, a man has access to water and all. The bottom land was not more open than the others, it was not so much that the land was level as that the water was there and the bottom land is a little better land on an average than hill land. The lands of these settlers ran on each side of the creeks. They put their houses on the bottom along the creeks in those early days. There is some vacant Government land within a radius of twelve or fourteen miles of Lake Creek. These Government lands that are left would average about one-fourth agricultural land.

Q. Well, now, you said 25 acres is enough on each quarter section to support a family of this land, if it was cleared.

A. It is, when they can get in and work it, it is enough.

Q. Why don't people go in and take these vacant Government lands that are in there?

A. A good many people don't like to get in and work hard enough to make a living on that.

Q. Well, there is forty acres in there, and there is eighty, and there is 120 and there is 160 acre tracts, and there are some much larger tracts in that territory, all of Government land today, has been from the beginning, and is unsettled, nobody on it.

A. Can you tell me where those lands are?

Q. No, I say within twelve miles of that Lake Creek settlement that you have been over.

A. Yes.

Q. Now, you say there is some Government land there. Whatever there is there that is vacant, why don't the people take that?

A. Well, that I can't say.

Q. Isn't it because those lands are not worth taking up?

A. No, at the present time I don't think there is, that you could get but very few 160 acres there that is not worth taking up.

Q. Well, if there are any Government lands in there, you think they are worth taking?

A. Yes, sir; I do.

Q. You don't know why they are not taken?

A. No, sir; I don't know why they are not taken. But I don't think you will find them in that area up there but what is worth taking up.

Q. Well, now, then, most of the settlements in that twelve by fourteen miles each way from Lake Creek and then east of Lake Creek to Mount Pitt, and from Lake Creek over to Big Butte, are on the streams or headwaters of these various creeks, are they not?

A. Well, they are close to the creeks, most of them.

Q. Now, your father cleared his land along the creek bottom, didn't he?

A. Yes; also hill land.

Q. The alfalfa is on these creek bottoms?

A. Certainly the alfalfa is on the creek bottoms.

Q. They don't raise this alfalfa up on these hills?

A. No, they don't raise it on the hills.

Q. And the orchards are nearly all down in these creek bottoms?

A. Well, there is orchards there that is on hillsides.

Q. I am not asking you to say that there are no orchards anywhere else, but the orchards most of them are on the creek bottoms now?

A. Along those farms, those home orchards are mostly.

Whereupon witness testified that, they do not raise any fruit for the market up in that country and there are no apples shipped East that he knows of from anywhere except down around the valley around Medford. Eagle Point is on a little railroad known as the "Jim Hill" road, the Pacific & Eastern. It was built a short time ago. It runs out from Medford to Eagle Point and then to Butte Falls, and is in operation. There is a saw mill at Butte Falls but it has not been there a great while. It was put there just before the railroad went in there, he thinks. There is a portion of the country there that is owned by timbermen. He thinks that probably right through that Butte Falls country, the timber would average a little better than some other parts of Jackson County. He has been through the Jenny Creek country, but does not know anything much about it and does not know whether it is good timber or not. He never cruised any timber. In his riding after stock, he gathers up stock and takes them on to the range and goes out and salts them. He did this for Mike Hanley, who has a ranch on the North Fork of Little Butte. The water supply for Medford is taken out of the North Fork of Little Butte. The settlement above the intake on the North Fork of Little Butte is very thin. That is the only place the town of Medford could select to get water. He would not say that they selected it on account of settlers but he could name the number of settlers if desired. There is Ilinger and George and Ed Frye, Gus and August Alder, Milo Conley, John McAllister, Charlie Turrell and D. Brad-

shaw, who all have claims. The Fry boys have been settled there for the last seven or eight years, and Conley settled there twelve years ago. There is no cleared land on the creek. He did not get any clear land at all, excepting a little glade up on the side of the mountain. The rest of his land is brush land, has been a burn at one time, part of it, and part of it is timber. He raises goats for a living and has about two hundred head, which pasture mostly on his place, which is partly fenced. He would judge that there is about sixty acres fenced, and about eight or nine acres cleared and under the plow. The Frye Boys are up on a bench, clear away from the creek on the side of the mountain, about a mile and a half from the creek. It has been timber land at one time, pretty heavy timber in there, and a fire burned it and they raise meadows on this place. One of them has sheep, the other has a few goats, and they raise vegetables and work around various ways to make a living—he couldn't tell just what. They sell a few vegetables to farmers around there—that is, to other settlers, while they are making a living, some few. They do not sell to the saw mills—there is only one little saw mill in there that they could get to. It depends upon the location about the timber—what kind of timber it is. In this country up there that he has just been describing, timber is very scattering. There isn't any timber there where that old burn was that is of any account much. He is not acquainted with the Lamb homestead. He has been through that country, but don't know anything about the sections and would not know what part

of the country the sections were in if one would name them.

Q. You could hardly apply for a quarter section up there outside of these burns, but what you would get pretty good timber on, could you?

A. The timber is not bad. It is scattered timber all over that country.

Q. I know, but a good many people have gone in there to buy this land for the timber? That is right? Haven't they?

A. Well, that I don't know much about. There has been quite a lot of timber dealing done, as I have heard of, but as to know it myself, I couldn't say.

Whereupon witness testified, that he never took a piece of Government land himself, either homestead or timber claim. He has been there about thirty-one years, something like that, and was fifteen years old when he went out there, and never took a homestead or timber claim. He was a stock man.

Q. You were a stock man?

A. Yes, sir.

Q. Well, now, this stock, have you ever herded, or driven, or rounded up several hundred head of cattle into the range, driven them up or collected them up?

A. Yes, sir.

Q. Whom did you do that for?

A. Mr. Hanley.

Q. Well, now, these cattle that are herded in that way all the way back to Mount Pitt, they roam over all that vacant land, whether it is owned by timber people or by the Government or by the railroad company?

A. They do.

Whereupon witness testified, that practically the only thing that is enclosed is the land that they farm, or that they want to pasture lower down. There is a lot of that land, Government land and railroad land, that is not fenced. If all of these quarter sections were fenced, the herding business would have to stop. He thinks that about 40 per cent of this land would be agricultural if the timber were cleared. Bonny Brothers bought his father's place about two years ago last August and agreed to pay $8,000.00 for the three hundred and twenty acres. They were not able to make the payments and his father had to take it back.

Q. What is this land that you have described, in a general way now, I mean, outside of these lands that have been settled upon, like your father's place, land that is owned by the railroad company, for instance, and other land that is not actually occupied by settlers, excluding now the improvements in houses or barns or fences, what would you say these quarter sections were worth per acre today on an average?

A. Well, now, that is a hard question to answer. I am not posted on the land prices.

Q. Well, you said, in answer to counsel for the Government, that this land was worth from sixty dollars to seventy-five dollars an acre. Now, what land did you refer to?

A. I referred to lands—he asked me about these lands that was cleared up ready for——

Q. Those bottom lands?

A. No, these lands that is settled, and been settled, been partly cleared, and what is left that is about the way they would range. Not the outside range country, that has no settlement or anything on—that I didn't have reference to at all.

Q. Well, now, what would you say that was worth, that that is outside of these that are settled on, say on railroad sections in that vicinity?

A. Well, I would just have to make an estimate of my own.

Q. Yes; well, now, what is your judgment of what it is worth an acre, take it a quarter section apiece as they run, and average it.

A. Well, I would say about $30 an acre.

Q. So that if a man applied to purchase a quarter section of this land from the railroad company at $2.50 an acre, and he was sold this land at that price, he would make about $27.50 an acre, in your judgment, without having to do anything in the way of clearing it up.

A. Well, that would be my judgment on the land, that that would be about what it would be.

Whereupon witness testified, that he had never applied to purchase any of this railroad land. He is now and has been working for two years for Mike Hanley by the month, and gets $75.00 a month and board for his family. He is an experienced stock man and the stock business of Mr. Hanley he thinks is profitable. He thinks he makes some money out of it. Hanley owns and pastures over his lands 750 to 800 head of cattle. He ships some and sells some right there in the home market, sells to local butchers, and some he ships by rail. He is about the largest stock man in that vicinity. There are others who have quite a few head and they all follow the same general business—when they are in the stock business. They turn their cattle out and the cattle go where they please, and they do not pay anything for the use of the lands that they range over that he knows of. Some of the stock goes into the Government reserve, the Cascade Forest Reserve, but he does not know what they pay for running on the reservation. A part of Hanley's cattle go into the reservation. He gets permits. There is good grass on the reservation.

Q. Well, it is pretty nice for the United States to have the reserve there for these stockmen to pasture on, and for this railroad to have these lands out so they can pasture on, isn't it, quite profitable to them?

A. There is good grass on it.

Whereupon witness testified, that there is no shipping of apples done from Lake Creek. There are quite

a number of little small orchards all through that country for use as home orchards. There are a few strawberries shipped, not a great many. They do not ship any pears from there, but ship quite a bit of butter and eggs—such as that. They are taken down to Medford and sold there. Lake Creek is just a postoffice and was established about twenty-two or twenty-three years ago. and is about twenty-five miles from Medford. The foothills begin east of Medford, going out to his place, just after one gets across the desert, less than ten miles. The country around Medford is practically level, and the level country extends almost from Tolo clear up to Ashland, where it begins to get quite hilly before one gets to Ashland after passing Phoenix. At Phoenix, it begins to climb pretty well. It is nearly level as far west as Jacksonville. The foothills begin almost at the town of Jacksonville, and the foothills begin about ten miles notheast of Medford on the way to Eagle Creek.

Whereupon, upon redirect examination, witness testified, that this land could be used also to raise goats on. This is not being done to a very big extent, there are quite a few goats. Mr. Coshow and Mr. Conley have some, and he cannot name the parties who have several small bunches. There are quite a few goats in there.

Q. You think at least eighty per cent of the quarter sections in there would support a settler and his family?

A. Yes, sir.

Q. Now, this remaining twenty per cent, is that

general in its distribution, or is it in certain localities?

A. It is just in certain localities. Well, there would be some quarter sections, you know, that would be rough, and some that would be along like say in canyons and places like that.

Q. Well, are those quarter sections that could not be utilized for the purpose of settlement on the even numbered sections as well as the railroad sections?

A. Yes, sir.

Q. Do you know whether it is a fact that the lands that have not been taken up for homesteads, by homestead entries down there, are lands of that character?

A. It might be. I don't know where those lands that he had reference to—I don't know where they are located.

Q. It is your best judgment that the available lands that were Government lands have been taken up?

A. Yes, sir.

Q. Now, you say you think these lands will average about $30 an acre in there?

A. Yes, sir.

Q. Counsel for the defendants asked you if an individual could purchase them at $2.50 an acre if he would not make a profit without doing anything. I will ask you, if the railroad company has only a $2.50 interest in those lands, and it can keep them, will it not make $27.50 an acre without doing anything?

A. They would make the same profit, certainly.

Mr. Townsend: I will withdraw the question.

Q. Take 160 acres, with 25 acres of good land that can be cleared and cultivated, such as you have described, and the balance of the land being average pasture land that there is in that country, about how many head of stock can you raise on that 160 acres?

A. On that 160 acres about 50 head.

Q. Would that make a comfortable living for a settler?

A. Yes, sir.

Q. You mean cattle?

A. Yes, sir.

Q. Would that make a comfortable living for a settler?

A. That many head of cattle will.

Excused.

Whereupon CHARLES A. EDMONDSON, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-five years of age, lives at Butte Falls, Jackson county, Oregon, and has lived in Jackson county about twenty-seven years. Since residing in Jackson county, his occupation has been farming and stock. His father lived in Jackson county and was a rancher there. He has lived and been engaged in farming near Butte Falls, in the Butte Creek country,

and has resided in that teritory for twenty years. The character of his farming was hay raising and such as that, and cattle, but he raised no grain to thresh. They sowed grain for hay. He is not a great deal, but is a little, acquainted with the farming business in Jackson county, and is acquainted with the farming business in the territory with which he is acquainted at Butte Falls. Referring to Defendants' Exhibit 259, he is well acquainted from Butte Falls around there in townships 33, 34 and 35, ranges 2 and 3 east, and has been over these lands sufficiently to acquaint himself with the farming business of these townships quite a little. The general character of that country there is that it is a timbered country. It is a free, loamy soil, and of the same general character, generally speaking, pretty much through there in this territory. There are several farmers in that area. They raise mostly hay, vegetables, berries, and such as that. They raise grain, sow lots of wheat in there for hay. They raise oats, some rye, barley and wheat, and some corn—but not much corn because they do not get so much to the acre for feed. They raise cattle, hogs and fruit there. He went over this land riding through for stock, hunting and looking through the woods, referring to townships 34, 35 and 36, ranges 2 and 3 east.

Q. Township 34, range 2 east contains between three and four thousand acres of unsold railroad land, township 35, range 2 east the railroad company still retains a substantial part of the original grant in practically every section, and the same conditions exist as to 36,

2 east?

Q. How much of the land in that area that you have testified concerning would, in your opinion, be suitable for settlement purposes by a man who would settle upon the land for the purpose of making it a home and engaging in the farming business; that is, on each 160-acre tract described, not necessarily by quarter section, but by legal subdivisions of forty acres lying contiguous.

A. Oh, I think half of it.

Q. What percentage of plow land would a man be able to get on a 160-acre tract, in your opinion?

A. I think it would average forty acres on every 160.

Q. Well now, do you mean, Mr. Edmonson, that only half of it, half of this entire area, would be suitable for settlement?

A. No. I meant there would be half of it would be agricultural to the plow—would be plow land.

Q. I intended to ask you, Mr. Edmondson, how much of this land could be taken in 160-acre tracts, for settlement purposes, by a man who was seeking to make a home, engaging in the farming industry to make his livelihood from it.

A. Oh, I expect a person could take 75 per cent of it probably as homestead land that way.

Q. How much land in this community would you have to have on 160 acres to supporta family; that is,

how much plow land would be required by a man engaged in farming?

A. Oh perhaps forty acres.

Whereupon witness testified, that his father lived in township 34 south of range 3 east, and raised hay and other crops on his ranch there. There is quite a little of this area in flats on the creeks that run through there, and there are bench lands in that country. The bench lands are timbered and have a loamy soil through that country, and brush. The benches in area vary somewhat, some of them are good big benches and some of them are not so large. It is practically a level country from the mouth of Willow Creek north five or six miles, just a bench bottom. His farm or homestead had one hundred and sixty acres in it, and he had six acres under cultivation. He made his home and maintained his family there, and made a living on that and his stock, made his living in the farming business—right in the stock. He was on the homestead. There are prairies scattered through the country, open land that is free from timber, and this covers a considerable area. There are quite a few prairies there, but he does not know the extent. He does not think the expense of putting those lands in cultivation would be great, and it would not be necessary to remove any timber from the prairie lands. He does not think there is any growth on any of that land that would prevent the land being farmed. The soil is such as would raise grains, hay, vegetables and fruits mentioned by him as being raised in that community. The land that could not be tilled would be good grazing land, unless

there would be some rocky point or something that it just happened to be. Outside of a little grazing, there might be places that would be rocky and perhaps worthless for any purpose, but not many of them, not much of this land would be that way.

Q. In your opinion Mr. Edmondson, what has been the effect of the railroad company's failure to comply with the conditions of this grant and sell these lands to actual settlers in 160-acre tracts at $2.50 an acre—what has been the effect upon the community?

A. I think it has kept our settlement back in there.

Q. Has it affected the farming business in that country?

A. Why, to a certain extent, I suppose.

Whereupon witness testified, that some of the lands that have been timbered have been cleared in that community and are now under the plow. Farms of that character exist in that country.

Whereupon, upon cross-examination, witness testified, that he does not mean, by saying that these farms have been cleared that a few acres on each quarter section have been cleared,—not exactly that,—and he does not mean that a whole quarter section has been cleared. He don't know any whole quarter sections that have been cleared. Generally, the lands that have been cleared are where each settler would have from five acres to probably forty acres cleared. Fredenburg, near Butte Falls there, has fully forty acres cleared. He has been

there quite a little while. The balance of his land is pasture land, with scattering timber on it. The homestead of witness is in section 32, township 35, range 3 east, which he took in 1904, and proved up on it in six years, living on it all the time there, keeping his family there. He still owns and lives on his homestead. His nearest post-office is Butte Falls, seven miles distant. None of the land in the vicinity of his place has been logged off in there. Some of it has been sold to timber people. He does not know W. S. Dewing, but thinks he is a Kalamazoo lumberman or timberman. He could not tell in regard to the acreage of timber in that general section of Butte Falls. He has heard that Dewing had timber holdings in there. There is a saw-mill company there at Butte Falls, called the Butte Falls Lumber Company, in which Dewing is interested, but he cannot tell who the Company is. They do not operate. They have suspended at present. They have not cut a great deal of timber in there. He thinks these timber quarters in that section around there are now worth perhaps thirty dollars an acre, or something like that. If a man had a good timber quarter and there were no impovements of any kind on it, he could sell it for about thirty dollars an acre, but he does not know of any being sold at the present time. Timber is regarded as valuable in that country. There have been timber deals going on there, he thinks, for six or seven years, but he does not know exactly how long. He does not know of many timber deals there lately. He knows that quite a lot of timber is in there yet, and there are quite a lot of private holdings in there in

the hands of homestead claimants. He thinks some of these homestead people have sold to timber people. He is not so well posted in regard to who has their land, only those around him. Near him there, he knows in his neighborhood about who holds their land and those away he could not tell. There is some good timber on his homestead and it is about all saw timber. He thinks it would run somewhere near about three million feet, board measure, on his hundred and sixty. He could not tell what he could have sold his quarter section for, for the timber that is on it alone, in the last four or five years, as he has not had it on the market and he never had an offer for it. He expects his quarter section would be worth thirty-five hundred dollars all right. He knew it was timber when he took it up—he knew there was timber on it. He had lived in that vicinity for twenty years and he is now forty-five years old. He filed on this homestead in 1904, that was about the time the country started to settle up in there. People began to come in and take homes but at that time he does not think there was any timber selling in that country. About that time people began to look at the timber and consider that the timber was worth something, he thinks. He never had much experience in the timber business, and was not posted in the timber business, and was no timber dealer. There were not many timber deals in Jackson county until about eight years ago. He does not know of any old pioneers that have taken land in there. They were most all of the second generation—the drifters came in from other countries. He supposes that he was like a good

many other fellows,—did not take his homestead in time, did too much running around, or something or other.

Q. Now, don't you know, Mr. Edmondson, that it was because homesteads became more valuable because the timber began to be worth something? Isn't that the fact?

A. Yes, and our government land began to get more scarce.

Q. Well, but the land was still there—the land didn't run away?

A. And I had a right to 160 acres of it. Therefore, I took it.

Q. I understand. Well now, Mr. Edmondson, will you, under your oath, say that you didn't really take that for the timber that was on it?

A. Not altogether I didn't, no.

Q. Well, but you wouldn't despise the timber because there was timber on it?

A. Oh no, I didn't, no.

Q. It was a pretty good inducement, wasn't it?

A. It was an inducement, and I have got good land with it.

Q. Yes, I know, when you cut the timber off it is all right.

A. Yes, it is. You are right.

Q. But the timber was what made you take it, wasn't it?

A. Not altogether, no.

Q. Chiefly, it was the chief reason you took it?

A. I could get a bunch of land with timber on it, and I took it.

Q. Well, I will ask you this question: As a matter of fact, didn't you take it because it was a good quarter section of timber land, that had three million feet of saw timber on it?

A. And agricultural land, that is the reason I took it.

Q. Well, how much have you got cleared?

A. I have got about six acres.

Q. You expect to be how old when you get the rest cleared?

A. I don't know.

Q. Now, as a matter of fact, you never expect to clear the rest of it, do you?

A. Well, now, I couldn't say to that. If I get some way of disposing of my timber some way or other so I won't have to burn it and waste it on the ground, I will clear it probably.

Q. In other words, if you sell the timber to good advantage you may clear up some of it, unless you get too much money for the timber? Then you will live like a gentleman.

A. If I could sell the timber, I can probably clear it, as you say. But I can't cut my timber and waste

it there on the ground.

Q. You wouldn't think of doing that?

A. No, I wouldn't think of doing that.

Q. The timber is too valuable to burn it up, isn't it?

A. That is true.

Q. I say the timber is too valuable to burn it up, isn't it?

A. I cleared six acres there and burned it, and found it quite a job.

Q. I say the timber is too valuable to burn, isn't it?

A. It is too valuable to burn.

Whereupon, upon re-direct examination, witness testified, that he has made this homestead his home with his family ever since he took it up, and never engaged in the timber business, and is no speculator in timber. His purpose in taking the homestead was to get a home.

Q. Now, about the time that you have testified that a demand from people commenced coming in there, taking timber, was there any increase in the demand for land for settlement purposes?

A. Sure there was.

RECROSS EXAMINATION.

Q. Why didn't you take a quarter section of that good land there that didn't have so much timber on it for a homestead, if you didn't want the timber?

A. I didn't know where to get it.

Q. Is it all timbered?

A. Pretty well the government land is all timbered in there.

Q. Couldn't hardly get a quarter section in there but what has pretty good timber on it?

A. There are others ahead of me that gobbled that up.

Q. Did you ever apply for a railroad quarter?

A. I applied for a railroad forty.

Q. Where was that?

A. Section 9, township 35, range 2 east.

Q. Was that a timbered forty?

A. No, sir.

Q. That was pasture land?

A. There was about thirty acres on the forty that is just black sticky land, oak.

Q. How much did you offer to pay for it?

A. I didn't make them any offer.

Q. You just wrote to them?

A. I wrote to the man at San Francisco, and he answered me back, and that settled it.

Q. When was that?

A. That was in 1907.

Q. You didn't make an application on these blanks that these timber brokers have sent all over the United

States and have men sign, to offer $2.50 an acre and file on the land and claim it under an act of congress—you didn't do that?

A. No, sir, I didn't. I wrote to the land commissioner at San Francisco, and he answered me back and said that the land was not on the market and the letter would not be recognized, and so that was all there was to it.

Q. Now, let me ask you are most of these quarter sections out there on the railroad quarters about as good as your quarter section, so far as the timber is concerned?

A. Well, in that territory there, they are.

Q. That is, they would run on an average of about three million feet of saw timber, in your judgment?

A. I think so.

Whereupon, upon re-direct examination, witness testified, that part of the land is heavily timbered and part of it more sparsely timbered. Part of this land that he has just testified about is heavily timbered, and part of it more lightly, but taking it on an average, he would judge that it would go somewhere near what he has stated. There are some parts of it that are glade land, and such like as that, but just to average it up he would judge it would go about three million feet. The glade land would be prairie and open land.

Whereupon on re-cross examination, witness testified:

Q. It would be here and there a little spot that would be what you would call a glade—four or five or ten acres in a spot?

A. Yes, sir; and here and there four or five acres with timber on some of it.

Q. That is what you mean by prairie land?

A. Yes, sir.

Whereupon, upon re-direct examination, witness testified, that this glade land would be two or three acres in lots of it. He does not know of any that he can think of that would be any larger on any of the railroad holdings there. There are some open prairies there, but he does not include those in these little glades. He thinks the most of these open prairis were taken before the grant was given in there,—most of those big, open prairies. Titles to those had passed before the grant took effect.

Whereupon W. T. HOUSTON, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-seven years old, lives in Section 20, township 34 South, Range 1 West, Trail precinct, Jackson County, Oregon, on a farm, and has resided in Jackson County all his life. He was born in Medford, Oregon, and has lived about eighteen years on his homestead. He took his homestead of one hundred and sixty acres about eighteen years ago, and received a patent about seven years ago. He has a family of eight children. He has twelve or fifteen acres of land under cultivation on his

homestead. It was brush land when he first took it, some oak timber on it, and he had to clear all that he has in cultivation in order to render it tillable. He has principally supported his family and himself from his homestead since he took it up. He raises corn, wheat, oats, any kind of small grain, potatoes, beans, cabbage, anything most of every kind, and it is average land for these purposes. He raises apples, peaches and pears. He has been engaged in the farming business all his life; was raised on a farm, and his father was a farmer in Jackson county and has a homestead in township 35 where witness was raised until he was twenty-one and was married. His father's homestead was one hundred and sixty acres, and he had five children. What is not in cultivation of the homestead of witness, he has fenced and keeps goats and a few cattle, he has only twenty goats. He uses that land for grazing. It is cheaper than grubbing for goats to kill the brush. Referring to Defendants' Exhibit 259, he is near Rogue River in section 20, township 34 south, range 1 west. He was raised at Beagle post-office,—his father owned the place where that post-office is, in section 12, township 35 south, range 2 west. He is pretty well acquainted in township 35 south, range 2 west. From there he moved to township 34 south, range 1 west, and has lived there ever since. He knows pretty well the railroad sections in township 35, range 2 west, and township 34, range 1 west, and has a pretty fair knowledge of the country about twelve miles north and south of there, about five miles from Rogue River, north or northwest, through the Meadows country. As-

bestos is a postoffice in the Meadows country, in section 26, township 33 south, range 2 west. He is somewhat acquainted with that land extending from where he lives to that postoffice and some of it beyond the postoffice, and he is acquainted with the general character of the land in the area he has mentioned, and north of where he lives up to the divide, to Douglas County, up Trail Creek,—he has been through that country some and enough to gain a fairly good knowledge of the character of the land there. Where he lives and in township 35, the land is mostly without timber, with the exception of oak and a few pines. As one goes north up Trail Creek, it becomes more timbered. Up pretty near the Umpqua Divide, the timber is pretty heavy. The land that is not taken up and cleared, in township 34 south, range 1 west, is mostly brush, low brush with oak timber, and is about the same thing as his homestead.

Q. Now, Mr. Houston, in your opinion, how many of the 160-acre tracts, what per cent or proportion of the 160-acre tracts in this area that you have mentioned, described by contiguous forty-acre tracts, but not necessarily by legal subdivisions, would, in your opinion, be suitable for settlement purposes, that is, for a man to go on there, as you have done on your homestead, and make a home of it for the purpose of engaging in farming?

A. I should think that about probably half of the quarter sections something about like the one I have taken.

Q. About half of the quarter sections are?

A. Yes, about the same, worth about the same, that is considered as good as mine was when I took it up.

Q. That is in that township?

A. In that township.

Q. Well, how much plow land could they get on each one of these 160-acre tracts?

A. You could get at least fifty per cent of plow land if the brush was off in 21. That is right due east of me. And in 17, corners with me, and in 29, corners on the south, it would make, I should suppose, about 50 per cent; about half the land would pay to cultivate if the brush were off so you could plow.

Q. How many of the quarter sections would be suitable for settlement, would contain enough plow land that a man could support himself, in this township, leaving a comparison of your own homestead out of it.

A. Well, what I am acquainted with—of course, I don't know how many has been taken up; I don't know exactly how many railroad quarter sections there are in that township—but what I am acquainted with, why, I should think about three-quarters of those quarter sections would support a family, if he had means to clear enough land to commence on.

Q. Well, now, with this other area outside of the township that you are in there, what would you say as to a man's ability to go on 160 acres of that land, described as I have mentioned before, and engage in farming and make a living?

A. In township 35, it is just similar, about the same thing there is in 34. But north, towards the Umpqua divide from where I live, is a different country. It requires more clearing—there is more timber.

Q. How about the character of the soil?

A. It is just as good.

Q. And the conditions except for the clearing would be practically the same as in the other townships.

A. The land is just as good, if not better, if the timber were off.

Whereupon witness testified, that the failure of the railroad company to sell this land to actual settlers at $2.50 an acre in the community in which he lives has delayed settlement to an extent. If this land was on the market, there would be at least half of the quarter sections that there would be someone on if it was put on at a reasonable price,—say from $2.50 to $5.00 an acre. People would settle there as he has done on his homestead and make a home out of it. If it was government land, there would be more than half of the land settled up.

Whereupon, upon cross examination, witness testified, that his father's claim, by the road, is six miles away from his. The nearest postoffice or trading point of witness is Trail Creek. Trail Creek has a couple of stores and a postoffice. There has been a postoffice and small store at Trail Creek ever since he lived there, about eighteen or twenty years. He is now living on his homestead,

but his father sold his homestead a few years ago. The homestead of witness is in Trail Creek precinct, on a branch called Long Branch, about five miles south down the river. Trail Creek is marked on Defendants' Exhibit 259, Stewart Creek, but it has always been called Trail Creek, and it empties into Rogue River, about a half a mile below his homestead. He cannot tell how large Rogue River is, but he thinks it empties into the ocean and rises in the Cascade mountains north and east of him. He has been living on his homestead eighteen years, and went on the homestead when he was twenty-nine years old. At the time he went on his homestead, there could not have been possibly more than half an acre of it clear or open.

Q. Now, this brush that you have cleared up on your homestead—I think you said twelve to fifteen acres you had clear?

A. Yes, sir.

Q. What kind of brush was that?

A. Well, it is manzanita and chaparral, what it is called up there—I don't know what you would call it.

Whereupon witness testified, that the brush on the ground is pretty thick, but it only grows up about as high as one's head mostly. The chapparal don't make a very large root,—one can pull them with a good team when the ground is wet. The scattering oak grubs, they either have to grub or pull with a stump puller. These are what might be called foothill lands. He cannot tell the exact height above the river at that place.

There is a break near the river and he is up on what one might call bench land. The Rogue River at this point has a narrow bottom, probably, on an average along where he lives, about a couple of hundred yards back from the river. The valley known as the Rogue River Valley, in Jackson County, in which Central Point, Tolo and Medford are situated, lies south of him a considerable distance. Central Point is about eighteen miles distant. There is a valley opposite his place. The valley opens out down the river after one goes down. There are streams that empty into Rogue River, and of course there is flat counrty. The valley proper, the bottom of the Rogue River proper, does not open out to amount to anything in farm lands until one gets down to Grants Pass or below. The bottom near the river is comparatively narrow until one comes to Table Rock, which is about ten or eleven miles from his house. He is north of the Rogue River valley, and Table Rock lies just north of Rogue River and south of Table Rock is the Rogue River valley. There is no valley of any consequence west and northwest from Table Rock. The valley lies back, Sam's Valley country runs back a mile. There is the Modoc orchard in Sam's Valley country, and between the two Rocks there the bottom widens out after one gets to Table Rock, and there is a pretty large valley runs back plumb out between the Rocks, and it is all level back to Sam's Valley. He thinks that the valley where the Modoc orchards are, along the Rogue River, is just about a mile and a half wide back to the Rock. It is a large valley as measured by valleys out

there, for bottom land. It is wider than anywhere north or northeast of there. The mountains at lower Table Rock close in near the river from that on, and next to Gold Hill, these mountains are pretty steep and abrupt, but he could not tell how high they are in there.

"Q. Those mountains are not much account, are they?

A. I cannot tell you that either. I have never tried."

I am not much acquainted from Sam's Valley down the river.

Q. Don't you know, Mr. Houston, that any man riding along the railroad there, following from Grants Pass up to Gold Hill and from Gold Hill on to Tolo, where you have Table Rock in view, and these mountains on either side in view, can see the Rocks from the train on an angle of nearly 45 degrees, most of that country? Isn't that true?

A. Some of those peaks run up.

Q. Well, it is nearly all peaks all the way down to Grants Pass, on both sides of the river, isn't it, excepting this little valley of about a mile wide in places?

A. I cannot tell you anything about the country below about Gold Hill.

Whereupon witness testified, that he had been on the train along there, and could see how it looks, and it looks pretty rough. It looks like there was a good deal

of chaparral and manzanita on the ground. One cannot see the rocks everywhere. He hasn't taken notice along the road going down the Rogue River. He has been along the line a few times and to look at it, it looks rough and he has seen some rocks, some canyons. He could see a few rocks but he could not tell how many. To the best of his knowledge, he had six acres of cleared land on his homestead when he proved up at the end of five years. Before he proved up and during the time he lived on his homestead, in order to make a living he bought a small tract of about ten acres, and of course worked out more or less around different places. This ten acres that he bought was mostly cleared—there was six acres of it cleared when he bought it. He doesn't know whether this ten acres was part of a homestead or a donation. It was a water lot in section 21. It had been settled a long time before he came there. He cultivated that during the time he lived on his homestead, and when he worked out he did most everything, — sometimes plowed for other people, and did most anything for people that lived near there. He never sold any wheat but had sold corn. He could not tell how much corn he had raised in any one year on his twelve or fifteen acres on his homestead. He sold the corn to his neighbores for feed or seed corn, or something like that, and sold by the bushel. It would be hard to tell how many bushels he had sold for feed or seed to his neighbors during any one year, but he had sold not over, he supposes, fifty or sixty bushels in any one year. He could not tell how much corn he raised

this year, but he did not raise any to sell this year. He had roasting ears for his family, and raised some corn as feed for his stock. He has twenty goats and about twenty-five head of cattle. His cattle run around, he does not keep them inside of a pasture, except the calves. The cattle run out on the range around close there. He had a few cattle that went back with other people's cattle who had larger bunches around the foot hills and up towards the head waters of the divide looking over towards Douglas county, and he occasionally rode back to get them, although he never had more than thirty or forty head of cattle at any one time. He sold some few cattle some years, and some years he did not. In the last few years, some of his neighbors had their cattle run back as far as the divide, about ten to twelve miles up to the head of Trail Creek from his place. When one gets to the head of Trail Creek, along near the divide, the timber is heavy in places. He would judge that most all the timber lands on the even sections up there was mostly taken, although he is not very well acquainted after one gets up near the divide. There are not very many settlers up near the divide, and he could not tell how much of these even sections had been taken up. He thinks there is probably a few kind of waste tracts of government land left up there where there is no land or timber. He has no map of the country and he could not tell exactly. He never cruised any timber nor applied to the company to purchase one of these quarter sections of good timber, up there, and no one ever asked him to sign an application to the company and offer the com-

pany $2.50 an acre, and he never knew about people doing that around in Jackson county, but he had heard of it before he came to court in this case. He usually sold about twenty-five to a couple of hundred sacks of potatoes raised on his place, and some small vegetables like that,—a few grapes and apples, different things. He thinks he could sell four hundred boxes at present. He has about two or three acres of an orchard. There are some Spitzenbergs and Newtown Pippins, a few Baldwins and Bellflowers. He would judge that the market for Yellow Newtons and Spitzenbergs first came up about eight years ago when they began to sell those two varieties or setting them out. He has not shipped any apples by railroad, nor sold any to dealers this year who did ship. He does not think he sold to anyone last year who shipped them out of the county. He never has sold any butter or milk to the creamery. He might occasionally sell some butter to his neighbors, some small amount, but not to amount to anything. He means when he says that about half of this land could be farmed, that after it has been cleared, after the brush and what trees there are, are off, it could be farmed. Further north and into the fir country where the timber is heavier, it would be more expensive to clear than where he is. Referring to Defendants' Exhibit 259, he is on the opposite side of the river from Eagle Point, six miles up the Rogue River. Beagle postoffice is where he was raised, and he is nearer the river than he was when he lived there. He is now in 34 east, and the postoffice is in township 35. There used to be a postoffice

at Etna. He lived right near there about five miles south of Trail, which would bring him just about to the edge of the yellow field shown on Defendants' Exhibit 259, which shows the Rogue River valley country. These are what one would call oak and chaparral foot hills, most of that country. There is as much as about half or three-fourths of those quarter sections in there that are suitable for cultivation, that would pay to clear up, and some whole forties. He might mention a few whole forties that a man could clear, the whole forty and farm it all after clearing them of these oak grubs and chaparral. Chaparral and manzanita and oak brush is the principl growth in that country. There is occasionally a little pine. There is some rock on those foot hills around there. In places it is rocky, but he would say there is half or more that could be plowed without the rocks bothering to much extent. It would not all have to be cleared. There is an occasional one hundred and sixty that one might get. He might mention one or two where one could get fifteen or twenty acres on that is reasonably good land, without clearing at all. That country is mostly south. Trail Creek is five miles above him. It is called Stewart Creek on this map. They always call it Trail there. There are several settlers along in there on the even sections above Trail, but he could not give the quarter section or the exact numbers of their land. They live along the creek and back. Some of them live back along west of Trail. There are several who live back pretty well up on the hill. Some of them have been there about ever since, he has been there from fifteen

to eighteen years. After one gets up Trail four or five miles, most of these even sections have pretty heavy timber in places. There is a little road work up there for the people who live there, and they work in different ways around, and most of them raise pretty good gardens and generally keep a little stock. They run their stock outside all through that country mostly. He thinks the reserve only charges them about thirty cents a head a season for pasturing their cattle. There is quite a lot of that land there in the reserve. He does not know that they have to pay the railroad people anything. It seems as though the country is partly settled where it belonged to the railroad, and they were never asked to pay. The stock roams all over that not fenced. The rule there is if you keep stock off the land you must fence it,—that is, one must fence against the stock. The majority of his hundred and sixty acres is fenced. He might have a few corners around,—he has never had it surveyed exactly.

Whereupon, upon redirect examination, witness testified that, speaking of the quarters of waste land up in the northern part of the Umpqua divide, he means that it is rock, a good part of that country. There are some canyons and deep places where it is broken land, which one might say is worthless without it was just for pasturage. He is in section 20, and section 17 corners with him, and sections 29 and 21 lay right to the east of him in township 34 south, range 1 west, where his homestead is situated. He is pretty well acquainted, of course, with those three sections, and they are pretty much the same

land as his, some probably a little better. He took his because he was right along the road and wanted a handy place to get at. This road he refers to runs from Medford to Crater Lake.

Whereupon WILLIAM BRENNER, witness called on behalf of complainant, being duly sworn, testified, that he is fifty-three years old, resides at Scio, Linn County, Oregon, and has resided in Linn County fifty-three years. He is a farmer by occupation and owns a farm about three miles below Scio, and about ten acres in town, and raises on his farm wheat and oat hay, and raises fruit and vegetables at home, such as potatoes, cabbage, beans, onions, apples, pears, plums, cherries, and he thinks there are a couple of prune trees. He has been engaged in farming in Linn County about three, possibly four, years, and was in the livestock business before that time. He is acquainted generally with the farming and soil conditions in Linn County. He is personally acquainted with these unsold railroad lands in Linn County, township 10 south, range 1 east, township 10-2 east, township 11-2 east, and part of 11-3 east,—that is, the western part of 3 east. He is not personally acquainted in township 10 south, 3 east, but has passed through it and he thinks he is acquainted with the general formations of land there and the conditions of the soil in those townships. He would place the percentage of lands in these three townships that are susceptible to cultivation, that could be cultivated, at about 90 per cent straight through.

Q. What proportion of the 160-acre tracts in forty-

acre legal subdivisions but not necessarily by quarter sections, in your opinion, could be made a home for a settler there, a man who wanted to settle there, and engage in agriculture, if he would go on the land and make a bona fide effort to clear the land of whatever might be on it, and farm it?

A. That varies quite a good deal. Some quarters are practically level, others are rocky.

Q. What would be your opinion as to the percentage of 160-acre tracts, take it straight through, that a man could select there, confining his selections to a section, not permitting him to go out of the section?

A. I cannot explain that exactly. Because some of it is too rough, and the rest of it, part of it would be say a rock cliff on it, and the rest of it you might say practically level, or in canyon shape like.

Q. Well, how many 160-acre tracts, in your opinion, stated by percentage, could a man clear off enough land and cultivate it to support himself and family?

A. Well, I am not posted on that. It would take a good big piece for me to make a living. Some people would make a living on a small tract.

Q. That would depend somewhat on the living that the man had?

A. Yes, sir, and how he worked his land, too.

Q. You testified that 90 per cent of this land would be susceptible to cultivation after it is cleared?

A. That is to the best of my knowledge.

Q. And the other ten per cent, now, what is that?

A. That is rock.

Q. That is waste land?

A. Yes, sir, it is rock.

Q. That is the land that you referred to when I asked you the question relating to the ability of a man to make a living on this land, settling on 160 acres.

A. This land cannot be cultivated at all where those rock are. It is impossible.

Whereupon witness testified, that there is some awfully good timber on this land, and some that is worthless. Take it in five, township 11, 2 east, take it in 8 and 9, there is nothing in that. It has been burned off, it is a big burn, there is nothing there. In 4 there is quite a rock cliff running through there. The timber does not get heavy until one gets farther back in these ranges. It is better after one gets back from the settlements a few miles, but it is pretty good to start in with. The Oregon & California Railroad Company retains a substantial part of its original grant in these townships and ranges, and he is informed that the Northern Pacific Railway Company has large holdings there.

Q. Isn't it a fact that several of these townships are owned practically altogether by the Northern Pacific Railroad Company and Oregon & California Railroad Company?

A. I think the railway company owns all of 3, 11-3 east, and I think there are just two homesteaders, if I

remember right, that have taken it as homesteads. I believe that is all in 3, township 11.

Whereupon witness testified, that he owns about a hundred and fifty acres on his farm, which he rents. The farm is situated near Scio in the Willamette Valley, and a part of it had a growth of timber on it, which has been cleared. There is other land in that vicinity that has been cleared and put under cultivation, and these lands that have been cleared produce good crops.

There was no cross-examination.

Whereupon J. W. HAYS, called as a witness on behalf of complainant, being duly sworn, testified, that he is seventy years old, resides at Gold Hill, Jackson County, Oregon, and has lived in Jackson County thirty-five or forty years. He farmed continually there for about ten years, two miles west of Gold Hill in township 36 south, range 3 west, immediately west of Gold Hill two miles. It is just a mile from the center of town to the end of his line, straight through by line on the south side of the river. He raised everything on his farm that is generally raised on a farm, wheat, oats, barley, hogs, chickens and cattle. It takes all to make a farm. He raised potatoes, apples, peaches and corn. He has his place rented out. He is pretty well acquainted with farming conditions there and soils that produce, and reasonably well acquainted with lands that can be cultivated and crops that can be raised. Some of the land that he has farmed there was river bottom, sandy loam land, and some of it lays back off the river and is clay

soil. The land that is up from the river bottom is called up-land, it is back up-land. It lays on a little creek, close to the creek, and is rolling, not flat, land. It is inclined to be rolling. Referring to Defendants' Exhibit 259, he notices Gold Hill on the map and he has been all over this country in through 35 south time and time again. He couldn't name the places that he has been over because he ran all over the hills prospecting, that is where he ran when he was doing nothing else. He ran all over the hills, but he could not name the sections. He was at Wimer, all through that land and through that country, all through west of Wimer. Pointing to 35 south, range 4 west, where Wimer is situated, and 35 south, range 3 west, where Sardine Creek is, the lower end of this creek is in township 36, 3 west, where it empties into the Rogue River. The upper end of this Sardine Creek is in 35 south, range 3 west, and he is, generally speaking, acquainted with the lands in that township and in township 36 south. Wimer is in township 35 south, range 4 west and he is generally acquainted with that and with the township south of that, 36-4 west, where Woodville is situated, just about the center of township 36 south, range 4 west, he is fairly well acquainted with that. Gold Hill is in township 36 south, 3 west, and he is acquainted with the railroad lands in that township and in township 37 south, 3 west, which is directly south of Gold Hill, and he is pretty well acquainted with portions of that—the north part of it. He is acquainted with and has been through the vicinity of Draper, which is in 37 south, range 4 west, and has been over the lands

in that township. He has not been recently over the lands in Applegate country,—not for several years, but he has been there sufficiently to acquaint himself with a knowledge of the country and the soil and the lay of the land there. He was raised in Applegate, and he was twenty-four years in the Applegate country in Josephine county. Applegate is a postoffice, has a little store, and is in township 38 south, range 4 west. He has been in there, principally along on the river, but has never been back on the side of the mountain. He has been on the main road. There is a creek in 38 south, 3 west, on the main road just before one gets to Jacksonville. He is not very well acquainted through where Ruch is, and he cannot give an intelligent view of the land north of township 35. He knows the lands on Sardine Creek, but he is not acquainted farther north in Jackson county than township 35. West of Beagle, he is very well acquainted, running up into township 34 south, range 2 west, and in 3 west. He has been over in 2 west in the Beagle country. He has been over these lands for different purposes. He has prospected all through that Sardine country, has been over every acre of it. For several years he spent his odd time prospecting in through there, also on the south side in the Gall Creek and Foote Creek region in there, which is about five or six miles from Gold Hill,—probably not that far by lines but in traveling the way they go. He has been over the land other than when he had prospected. He had stock in there. Years ago he had stock which ran in on both Sardine and Gall's Creek. He had cattle

and horses in there. He has been over and is acquainted with the railroad lands in the township in which Gold Hill is situated, 36 south, 3 west, and the land is generally clay soil, with some rocks on it, scattering rocks, covered with brush and scrub timber. From 35 per cent to 40 per cent of that land, from his observation from seeing land like that, that has been worked through the country there the last few years, could be made susceptible to cultivation. They grow most everything on it, when a practical farmer gets to work on it. The other lands that he has mentioned as being acquainted with, compare about the same with the railroad lands in the township in which Gold Hill is situated, take it through, conditions would be about the same.

Q. What is your opinion as to the ability of a man to take 160 acres of this railroad land and make a home of it, use it for farming purposes?

A. Well, that is a question of the ability of the man. It depends on the ability of the man in regard to that. If he is a practical man, why, he could make a living, and there are some men that couldn't make a living on 160 acres of good land.

Q. His ability and industry would have something to do with that?

A. Yes, sir.

Q. Well, take a man, an industrious farmer, what would you say as to his ability to make a living?

A. Yes, he could utilize it by raising what stuff is

there, and having his chickens and cow and hogs with him, and that all counts in with practical farming with me. I couldn't farm unless I had cattle and some cows and pigs and chickens to help make the farm pay, to use right at home to feed up your waste.

Q. What has been the effect, Mr. Hays, of the railroad company's failure to comply with the conditions of this grant and sell the land to actual settlers at $2.50 an acre in 160-acre tracts—what has been the effect in that community where you have resided for 35 or 40 years?

A. Well, it keeps the settlement down so that it would be sparsely settled, you know, is the effect, because I know of persons that wanted to buy that and couldn't buy that, wanted to settle and had to go away.

Q. Are lands of similar character farmed there and used as homes by farmers?

A. Yes.

Whereupon, upon cross-examination, witness testified, that his place was a part of the Jacob Gall donation land claim, and is at the mouth of Gall's Creek, and is on the south side of the Rogue River, and originally consisted of three hundred and twenty acres. There are about sixty or seventy acres of it bottom land. The balance of the land is clay soil and runs back up Gall's Creek, on both sides of it.

Q. Have you any hills on your place, any of that rough hill country on your land?

A. Nothing but benches, old bench land. It is not hill, because this was taken in an early day.

Q. They took it just the way they wanted it?

A. Took it the way they wanted it, yes.

Q. Under the donation act they could take it in any shape they please?

A. Yes, sir, at the time they took it, they could have taken it that way.

Whereupon witness testified, that in prospecting over these townships, he was sticking holes and prospecting for gold. He does not consider that country around Gold Hill, all through there, a pocket mining country. It is a mining country. He has prospected these lands for minerals of some kind. He located several mines and has taken out some money. Then he has located some mines and let them go back. He didn't have money enough to develop them. He never developed a mine himself. He means when he says that he prospected and took out some money, that he took out some specimens of rock and had it milled. There was a mill there in the country to mill it with, part of the time, he had it milled at the Sardine mill and some at the Gold Hill mill. There is a quartz mill at Gold Hill. The valley between Gold Hill and Grants Pass, along the Rogue River, is a narrow valley along both sides of the river. In some places, the hills back of Gold Hill and on either side of the Rogue River go up very abrupt right at the river and then they break back. The greatest elevation

is next to the river, and then they break off back, it is more accessible to travel. Some places one cannot get straight up from the river. He does not consider the timber on these railroad lands in these townships that he has been over merchantable timber. It is scrubby pine, oak and fir. There are spots of rocks on some of these quarter sections and on the government land, just the same as on the other, the whole country is more or less spotted. There is some government land in there adjoining his place, it is too steep to be taken up and there is no timber on it worth taking. There are some of these railroad lands—some of these railroad quarters in that same condition—that is, the railroad land is spotted. Where the peaks run up abruptly it may be a railroad or it may be a government forty or eighty right on the top of one of these back-bone or ridges that run through there. The lands along the creek are best as a rule—really a little the best for certain purposes, and you really get more level land along these creeks as a rule. These farmers that live back on these farms back of Gold Hill have real farms. Some of them have one hundred to a hundred and fifty acres in cultivation back in these hills. There are some right up on Sardine Creek there, just up on the high benches away from the creek, not right immediately on the creek, they come down to the creek, but the land they cultivate is back on a high bench.

Q. Sams Valley is a pretty good farming country, isn't it?

A. Right in Sams Valley, yes, sir.

Q. And the Evans creek country is pretty good too?

A. Yes, sir.

Q. They are all little tributary streams that run into the Rogue River?

A. Yes, sir.

Q. Well, now, don't you know, Mr. Hays, that this railroad land that you have been over until about seven years ago was on the market at $2.50 an acre, nearly all of it, especially that that was prospected over for mineral purposes?

A. No, sir, I don't know it.

Q. Don't you?

A. No, sir.

Q. Did you ever apply to purchase any of that land that you prospected over?

A. I had a partner that applied for a piece on Foote creek that they wouldn't sell it to him.

Whereupon witness testified, that his partner wanted one hundred and twenty acres for orchard land; this was about eight or ten years ago. He does not know that he offered to pay anything, but the company refused to sell it to him, as his partner reported to him. They were partners and it was a business transaction, but he did not see the communication from the company. He applied himself, personally, to purchase only one little piece. There was a little seven acre tract lying between

his place and the river—a little fraction of seven acres—which was sandy loam land, mostly sand, and was on the river bottom. He did not buy it, but applied to purchase it about twelve years ago. The Company refused to sell it to him on account of the water front, or something of that kind. He paid but little attention to it because it was a small fraction. That piece of land where it lays is worth one hundred dollars an acre because it is water front. He wanted it because it joined right on to his land and connected him with the river and he could use this land and would join his donation land claim. He owned stock which roamed back five or six miles from his place on Gall's Creek, for two years, which pastured all over the land that was unenclosed, including the railroad land and even sections just the same. If he had stock now, they could not do that. They would have to have a different system now because they would have to eat the brush which has grown in there. It has been protected and has crowded the grass out and many stock could not live in there, but it could still be used for stock to a certain extent. The brush has grown up on this land and it was formerly burned off. The farmers and stock men used to burn the brush out all they could to keep it down so they would get good pasturage. They did not kill any timber there. The stock men would burn off this land and clear off the under brush and in that way would get fairly good grazing and free pasture. He owned that place down below and made about as much on the ranch as he did on the stock. These small ranchers that had homesteads

away back all had to have some stock, and that was a part of the proposition to make a living and was a part of the problem with him. They had to have stock to range out to make their living.

Whereupon witness, upon redirect examination, testified that the upland and land away from the stream higher up is good for fruit raising, as far as he has seen it tried, fruit does first rate. Fruit raising had been tried on these hill lands and he has seen fruit growing.

Q. What effect, if any, has the withdrawal of these lands from sale and the failure to sell to actual settlers—what effect if any has that on the schools and the ability of people to obtain schools for their children?

A. Why, their being isolated, they cannot have the facilities of schools as they can where it is thickly settled, on account of those alternate sections laying around, a man being on one and the other not being settled, I would judge.

Q. Mr. Hays, please describe if you can the lands as they have been settled up in this country; that is, what lands were taken first and what lands have been taken up gradually—the character of them.

A. The first locations that were made there were in the openest places, in the low land; and then as they go ahead they keep going up, working higher up in the hills, working up on the upper land, gradually going up as it passes along. Now, I have noticed the last few years that where there have been roads opened out they

have settled all along these roads and cultivated all kinds of stuff—apples, peaches and all sorts of stuff right on this road; that it was settled up.

Q. The first land was taken up under the donation law?

A. Under the donation law, yes. The next was homestead and pre-emption.

Q. Have the settlements advanced into the timbered sections as years have passed?

A. Yes, they are going that way. They keep going and growing that way all the time.

Q. That is, the first settlers took the lands that were the easiest cleared, and the men who came later had to take lands that they would have to devote more work to putting in a state for cultivation?

A. Yes.

Whereupon J. W. KELSOE, called as a witness on behalf of complainant, being duly sworn, testified that he is twenty-eight years old, and resides five miles from Derby, in Jackson county, Oregon. Derby has a post-office and a little store. He is a rancher and stock raiser and lives on his homestead there, which he has had about two years—a little over two years, and which consists of one hundred and sixty acres and is described as the northwest quarter of section 2, township 34 south, range 1 east of Willamette Meridian. He has lived in Jackson county about twenty-eight years, practically all his life. He has not had a great deal of experience in farming

for himself but did quite a little farming for wages and has worked on a farm at intervals, half of the time for himself, the other half for other people—since he started to work on a farm when he was fourteen. He is acquainted with the soils, climatic conditions and farming business in Jackson county. Referring to Defendants' Exhibit 259, his homestead is located in township 34 south, range 1 east, and the town of Derby is marked on this map near the corners of sections 14 and 15, 22 and 23. He is acquainted from Derby to Big Butte, taking two or three miles on the northeast of Big Butte and along Big Butte from the mouth of it, in around Butte Falls and also a strip on this side of Big Butte. He is acquainted with the lands five miles east of Derby and about five miles north of Derby. He is not acquainted northwest of the town of Trail, excepting to the Rogue River and a very little south of Derby, just along the road, there is a road that runs in there and he has been across it in a couple of miles. He is acquainted very little on the west of Derby. He has worked farming in sections 14, 2 and 3, and 23, in township 34 south, range 1 east, where they raise berries, hay, fruit, apples, wheat and oats. Wheat and oats are the main crops, it is not threshed, it is grain hay, used as hay. They raise corn and vegetables in these places where he has worked, such as potatoes, cabbage, carrots, rutabagas, and turnips. There are settlers in that township besides himself. The even numbered sections are nearly all settled up. There are quite a few of the odd numbered sections which are settled, pieces out of them

are settled. The remaining unsold railroad lands in that area with which he is acquainted will average about with the even sections and is about the same kind of land. The unsold lands of the company, the lands that have not been settled upon, that have not been purchased from the railroad company, would average approximately half that could be cultivated and crops raised on them—that is, 50 per cent of that land could be cultivated, and he thinks that 50 per cent or half of a one hundred sixty acre tract would be sufficient for a man who is an actual settler to maintain himself and family on. The other half of the land would be suitable for pasture for sheep, goats, hogs.

Q. What effect, Mr. Kelsoe, has the failure of the railroad company to comply with the conditions of the grant and sell this land to actual settlers at $2.50 an acre, in tracts of 160 acres, had upon the development of the country that you are acquainted with there.

A. It has been a detriment in roads and schools is the main thing.

Q. Has it retarded settlement?

A. Yes, sir.

Whereupon, upon cross-examination, witness testified, that his homestead is the northwest quarter of section 2, township 34 south, range 1 east, about five miles northeast from Derby, which is not a town but has a postoffice and a little store, but he could not tell how long it had been a postoffice and little store. He has resided there seven years and

it was a postoffice when he went there and there has been a store built there. The store was erected about three years ago. Leeds is a farmhouse and postoffice close to the Rogue River, about twenty miles up Rogue River from Eagle Point, something like that. At Trail there is a postoffice and little store combined, and there was a livery stable and kind of hotel there, he thinks. He is not so well acquainted at Trail, although he has been there. Derby is on the Big Butte and Eagle Point on Little Butte. The section in which his homestead is located, is not on the head of any stream or creek and there is no stream or creek running through that section. His homestead is not timber land but is covered with brush and timber. What he means by timber is, that it is not covered with saw timber—it is wood timber. He would term wood timber oak and scrub timber. He has about a quarter of an acre cleared on his homestead. He lives on his homestead with his wife. He has no fence on his homestead. Moved there a little over two years ago and lived there continuously, excepting the time that he was off. There is a piece of land in section 23 which he spoke about farming, and he has been at his father's place during the time he was putting that in. His father's place is in section 14, about two and a half miles from his place. Most of the time he took his wife with him when he was farming that place. There is a house, barn, sheep corral and well on his homestead. His house is sixteen by twenty-four with a four foot addition built on one side, and then cut through so that the four foot addition is all under one

roof, and he built a bedroom. It is a three room house, sawed material, which he obtained from the mill that used to be on the top of the mountain. That is a timbered country above where he is. He did not take a timber quarter for the simple reason that the timber was higher up than he wanted to go. The Government timber was about all owned at the time that he had taken his homestead—the quarter sections that had been public land had nearly all been taken, it was not occupied but was held by owners as timber claims. Most of them entered this under the timber and stone act. Some of it had been homesteaded but the largest part of that country was entered under the timber and stone act. He supposes they took it for the timber, as it is pretty fair timber. These homestead people up there who took timber lands did not, to his knowledge, sell out when they got title. He knew of no abandoned homestead cabins up there in that best timber, where the cabin has gone to wreck and the land has passed to timber companies or timber investors, except that he now recalls two. He recalls two of these abandoned cabins and does not recollect more than the two that he knows have been abandoned. He could not say how many settlers there are in township 34 south, range 1 east, outside of the postoffice and the people who live at and run the postoffice. It is what he would term a pretty thickly settled country for a mountain township. Right around in that country, most of the mountain townships have many people in them and have good schools. There are two schools that he knows of in that township, one of

them has something like ten or twelve children and the other one there had eight on the list. They have six months in their school year, supported by a two mill tax last year. He couldn't tell if the tax is levied on all the land in the school district as he is not posted in school laws enough to know. He does not pay any taxes on his land because it is a homestead, but everyone who has a title has to pay taxes and he supposes the railroad is included. They have good summer roads in that township, but mud in the winter. Some places are worse than others. Some places in that country would mire a saddle blanket. He has been through the Willamette Valley, up about Eugene, in the winter time with pack horses and the roads are very bad. He has counted thirteen settlers that he knows of in that township where his homestead is situated. There are families in there with whom he is not acquainted. Three of them he would say live on the stream of Big Butte, and three at the postoffice and store. He does not know of any forest rangers of the United States living in there, but knows that some of these forest rangers do live out towards the forest reserve. He has run stock on the outside range up towards the mountains east of him, and it is quite a common way to turn the stock loose and let them go in the summer months. There are quite a few cattle ranged up in that country that belong to these ranchers and others down in the valley farther. There are not so many north of him in the summer that would get to the Rogue River, but there are some northeast of him and about something like three hundred to five hundred

head of cattle range in there that really don't belong there. The main cattle man in that country is Nichols. Most of these ranchers that he speaks of in this township and others, have a few head of cattle that they turn loose on the summer range. To make a living he has sheep, wool, hogs and cattle to sell. He sold twenty mutton sheep before he came down to Portland. His sheep range along the Big Butte on the commons. He got a boy from the Aid Socicty in Portland who generally goes out and brings his sheep in at nights and looks through them once or twice a day. He has never sold any beef cattle. He bought a bunch of cattle, and pretty nearly all the cattle he has sold have been yearlings. He sold out the cattle business. He sells his hogs at Central Point and Medford. Medford is about thirty miles away and Central Point twenty-five miles, and Eagle Point fourteen miles. Eagle Point is where he has always hauled his stock from. He generally rounded up at his father's place. The place of witness is sixteen miles and a half from Eagle Point, which is quite a little trading point on the Pacific & Eastern Railroad, which has been there for about two years. Eagle Point is on Little Butte, just before it empties into the Rogue River, and he expects Eagle Point had been settled before he was born. Eagle Point is a place of something like one hundred fifty to two hundred inhabitants. He does not know whether donation land claims were taken around Eagle Point, that was before his time, when he came there that country was settled up.

Q. You say fifty per cent of these lands could be

cultivated. You mean if the brush or whatever there is was cleared? You mean the soil is good enough and the ground is sufficiently level that it could be cultivated?

A. No, not necessarily. It is level enough to cultivate, I think, yes. I think it would have fifty per cent, that much, now.

Q. You mean if the brush was cleared?

A. Yes, sure.

Whereupon witness testified, that he cleared a quarter of an acre last year to see what it would do, after the farming season was over. They told him the land was too dry to raise anything. He cleared that for an experiment and raised wheat. He let the stock eat it. He put it in and let it come to a head to see what it would raise. He has not raised any vegetables. He has not lived on the place in there he was farming near his father's place. His father was on his farm and what time he was farming he was at his father's place. Most of the time during the two years he had been back and forth to his homestead. It was not his intention merely to comply with the law by being on the place only every six months and doing a little improvement. His stuff had all been at his home and it had been his home when he was not at work. He was away from home most of the time at work. He did not go away from home necessarily to make a living. He expects he could have made as good a living, probably better, if he had stayed at home—he don't know why he did not stay at home,

except that he needed the crops that he was raising on this other place. He didn't have his place cleared and he would have to make something while he was getting ready to improve his place. He has one child of his own, and also a little boy from the Aid Society. The boy goes to school but his girl is not old enough to go. His family is not at present on the homestead. They came to Central Point with him when he came down to Portland as witness in this case and his wife is there waiting for him, but they have not moved away. He did not take a timber quarter up there because he was not looking for timber. He wanted the land for a home. He does not know that he could or could not have gotten a good timber quarter if he had wanted to, he never posted himself on the timber back there, he never paid any attention to it, never looked to see whether any of these railroad quarters had good timber on them—never paid much attention to timber at that time.

Whereupon, upon redirect examination, witness testified, that this homestead of his, contains no timber of any value except for fuel, that is about all. There is some timber that would do for fencing and probably little improvements. It would not pay him to mill it, but if he had a mill of his own, it would probably pay him to cut it for fence and improvements. He has forty-one head of goats that have ranged most of the time since he has had them on railroad section 3 out on Butte. He does not range them on his homestead, only turns them loose and watches them awhile and drives them back. He has a little piece fenced in on the railroad land and

he keeps them confined. Goats are a great deal of assistance in cleaning off the land, by eating the brush out, killing the brush off, opening it up on the brush land. His purpose when he took this homestead was to make a home out of it and that is what he intends to do with it. There is a spring above the house about a quarter of a mile that he intends, as soon as he can, to pipe down there to irrigate his garden and berry patch. There is a man living right by the side of him, and he and this man had been talking about going in together and building a ditch for about six miles out of Clear Creek, and they went over and surveyed the ditch but they haven't thoroughly decided whether they will do it or not. He intends to clear up enough of his land so that he can make a living from it. Oak timber is hard to clear and it will be slow to clear, and he intends to clear it as fast as he can. The character of the land his father lives on, is mostly black, sticky and brush, and the character of the land is good as to its productiveness. He raised on his father's place, garden and vegetables and hay. The main crop is hay, about all. They just raise garden enough for themselves and what hay they need. He would think that the less schools they would have in that section, the less the railroad land would be taxed—if the railroad pays the taxes levied on its land. The wheat that he raised on his land grew good. He measured it and it was about four feet high. It headed out good heads four inches in length and the grains seemed to be full.

Whereupon, upon recross examination, witness tes-

tified, that this grain he raised was on that quarter of an acre. He did not cut it at all but turned the horses in and let them pasture it off. It was just a little patch, in a circle—and it would be hard to guess at the size of it, he estimated it as something like a quarter of an acre. It was below his barn. The buildings and barn were on the same forty acres with the clearing. He has this clearing in one place and his buildings in another place. It is about a hundred and fifty yards from his house down to the clearing, he did not want to farm the land right in his yard, he wanted to put that into berries or something, in fact he had set it in berries. He has nothing fenced excepting that little piece, and that only with a brush fence, he has a little wire fence around his house, the yard is fenced in around the house. The quarter of an acre that is cleared is fenced with brush fence. He pulled the brush off the trees and threw them around for a fence and sowed this wheat in there to see whether it would produce. He had been told it was too dry there to produce.

Whereupon W. A. BOGARD, called as a witness on behalf of complainant, being duly sworn, testified, that he is twenty-six years old, resides at Roseburg, Douglas County, Oregon, and was born in that county in what is known as Sutherland Valley, on a farm. He lived on a farm with his father until he was sixteen years old and he has been on a farm off and on since, his father resides on a farm there now. He has not farmed any since that time—that is, to go out in the fields and actually farm, but he has been out there every month on

the farm and he thinks he is acquainted with farming and farming conditions generally in Douglas County. His father first had a forty-acre homestead there, and then afterwards bought a hundred and sixty acres adjoining that. The homestead of his father was about 50 per cent of it agricultural land, may be more, something like about twenty-five acres of the forty he cultivated. Of the hundred and sixty that he bought later on while he was there with him, he would guess that his father had something like about forty acres that he cultivated and could have cultivated more. The balance was good pasture land and was a sandy soil, some of it was rolling. It was all good pasture land and more of it could have been farmed. Part of it was timber and slashed off. In fact, the entire forty that his father homesteaded was all timber and that was slashed, and then something like forty acres of the hundred and sixty was slashed. Clearing was required for that place, and his father certainly made a living from the land that he farmed. His father had a family of five children. The present business of witness is that of a timber cruiser and he has been engaged in that occupation during the last seven years—that is in the timber business. He milled one year, 1907, and he has been in the business for seven years. He has worked pretty much over Douglas County. There are some parts of Douglas County with which he is not so well acquainted, but along west of the railroad and some of the northern part of Jackson County, he has been over considerably. In his business, he located some homesteads, and he is in the real

estate business at the present time. As a timber cruiser, a man generally examines the timber lands and the soil, and the possibilities of taking the timber off, and what the land would be fit for when the timber is removed, and the expense of clearing also. He takes notice of all these facts in cruising lands, and would make a thorough examination of the land as well as the cruising and the possibilities. Referring to Defendant's Exhibit 259, he can give the townships and ranges in which are the unsold portions of the railroad lands with which he is acquainted and over which he has been. Starting in at township 22-6 south, ranges 7, 8 and 9 west, he has been over that a great many times. In fact, over the entire Smith River country. That is where he learned his business, with the Smith-Powers Company. He was going to include that down to township 25, which is practically the same, and then the ranges beginning at range 5 and running to range 9 west, all west. He is not acquainted east of the meridian. Beginning at township 26-2, and all down the line, all the way down the line till one gets down to township 28, he is acquainted, but he is not much acquainted in township 29. Township 26-3 is the farthest north. He has been very little through township 23-4 west, but he has been in township 23 south of ranges 5, 6, 7, 8 and 9 west, through that country a good many times. In fact, through the entire country there. He does not know but what he is as well acquainted with one part of it as with another, excepting a few points, as he stated, in township 29-2 and in down to township 32 he is not so well acquainted. The

farthest north of these lands with which he is acquainted is about township 22. He has been over a good portion of that township a great many times, beginning at ranges 4 to 9 west.

Q. Well, now, what is the character of that land as to its agricultural possibilities, possibilities of settlers going in there on 160 acres of land, and settling there, and making a living on the lands, as to the railroad lands indicated there on the map by the green?

A. In my experience and examination of the land I find about 35 per cent of it would be agricultural land, and I judge 95 per cent would be agricultural and grazing lands.

Whereupon witness testified, that some of the timber on that land is pretty good timber, and part of it is not. Ranges 8 and 9 in there are very good timber. The timber varies, it is not all solid all over. There is not a township in there that is solid timber all over. His estimate is based upon the clearing of the land, and all his estimates are based upon putting the land in cultivation. There are some places where a man could get some land that is clear. Of course, further back and in the mountains there would be less. There are townships there with a good many sections that the land could be cleared very easily, and some of it is prairie land, that is on railroad lands. What scattering land there is, in townships 28 and 29, quite a bit of that is open land. He is acquainted in township 23 from ranges 4 to 9 west, and they are practically the same as those he has described

in township 22; very little difference in township 23, if anything, a little better—more of the land is open, especially ranges 8 and 9, that is very good land and the timber is about the same, very little difference in general. He is acquainted in township 24 from range 2 to 9 or 10 west, and the agricultural possibilities of the railroad sections are about the same, as those described in reference to townships 22 and 23, he would think they were not quite as good in a portion of it—very little difference. He does not know but what they are about the same there in township 24—very little difference. He is acquainted in township 25 south, ranges 2 to 9 or 10 west, and a portion of these railroad sections, compared with the others, is better. Take it as a whole, they would average about the same, but he would state that township 25, range 8, is tolerably rough—that is, township 25 is rougher, but there is a burn and not much timber in there. It is a large burn, one of the largest burned areas in that district is in that township. That burn covers three or four sections, at least, in one solid burn, and then there is a strip of timber and other burned areas on and on all through the township—half of it is burned. He is acquainted with the railroad lands in township 26, running from ranges 3 west to ranges 10 or 11, and it is about the same as the railroad land and other outstanding land—practically about the same as the other. He is acquainted in township 27, beginning with range 3 to range 10, and the agricultural possibilities of those lands are very good. The township in ranges 3 and 4 is very good land. Then they are more

abrupt towards the coast and more timber. The soil is good, most all the land the soil is practically good on that, only it is not so level. This territory consists of a good many areas of bench lands and flats in 1 and 2 west. He is well acquainted in township 28 south, beginning with range 4 west, that is in the wagon road grant, and there is very little railroad land in that excepting in ranges 4 and 5. The railroad land in that township is very good—that is all good land in there and he thinks there is more agricultural land and less timber land as compared with these other lands he has mentioned—quite a portion of the railroad land in township 28, range 5, is better land. There is a good deal of prairie land. This is about eleven or twelve miles from Roseburg, which is a city of about 6000 population. He is acquainted with the railroad lands in township 29-4 to ranges 13 or 14. A part of these lands are very good for agricultural possibilities. The townships over near the coast, in ranges 11 and 12, are better than the balance. The other lands are about in proportion with the lands in Douglas County. He does not know whether ranges 11 and 12, township 29, are outside of the grant. About 65 per cent to 70 per cent of ranges 11 and 12, township 29, could be cultivated and the balance would be good grazing land. It is all good soil in there, low rolling hills. He is acquainted with township 30, range 4 to range 13, of these railroad lands marked in green on Defendants' Exhibit 259. There is a variation in these townships, at the coast. There is very little difference in all of that, that is east of the

railroad, that is practically the same—the water sheds and the land—excepting township 27, which is better than the balance of it. From township 30 south, ranges 11, 12 and 13 west, he does not know whether the grant takes in that or not. that is a good deal like the townships he has described above. There would be 65 per cent or 70 per cent of it good grazing or could be cultivated. The land in ranges 11 and 12 west is rolling land, low hills, and benches and flats, none of it is steep or rough to speak of, and does not rise like some of the other land. Beginning with township 31, ranges 5 to 13 west, he would like to class that with the balance of it. Beginning with range 10 to 13, it would be about 65 per cent agricultural land in township 31. He is acquainted with township 32, ranges 4 to 9 west, inclusive, and 30 per cent of these lands could be cultivated. He is acquainted with township 33, ranges 4 to 7, inclusive, and 30 per cent of these lands could be cultivated. He is acquainted with township 34, ranges 5, 6 and 7 west, and the railroad lands in that township and those ranges are pretty fair, the most of it—perhaps 45 per cent of it would be agricultural land. He is acquainted with township 35 south, ranges 5, 6 and 7 west, and he does not believe they are quite as good as the lands in township 34 south, ranges 5, 6 and 7 west. Township 35 south, range 7 west, is pretty fair, there is about 35 per cent could be cultivated. He has been through the other ranges in this township from time to time, but would not care to pick them up because there are others there that he knows better. He is acquainted with the other

townships south of there, but not very much, he has been through there a great many times but is not as well acquainted with them as he is with others, he has been through there generally and has cruised in there a good many times, but these townships here and there, and pieces here and there—he has made a trip on Evans Creek in township 34 a good many times, but then not generally speaking of the country. He is not particularly acquainted with the character of the lands in ranges 1 west to 4 west, in the township that he stated he was acquainted. He has been through them, but then these that he has named he has been over a great many times and he would not care to pick up those he is not particularly acquainted with. These percentages, in his estimate, would hold good if the lands were divided into one hundred and sixty acre tracts by contiguous forty-acre subdivisions, and in his opinion that much land would be sufficient to support a man and his family, taking this land up for farming purposes. If one gets twenty acres of agricultural land on one hundred and sixty and the balance is any good at all, he can support a family.

Q. What would you say as to the availability of these lands in their present condition for settlement in 160-acre tracts, by actual settlers, for the purpose of going on the land and making a home there, farming, going into the farming business?

A. Why, I think they would be all right. I don't see any reason why a settler could not obtain a home and maintain his family there.

Q. I am speaking now, Mr. Bogard, in their present condition. Have settlers gone onto lands similar to this and cleared it up and made farms out of it?

A. Yes, sir; certainly. Certainly, practically everything was taken.

Q. Has that been of frequent occurrence or rare?

A. No, very frequent. There are a great many people through every day looking for such land.

Q. For what purpose?

A. For unimproved land or public land, for small homes. What I mean is, men with little means.

Q. Mr. Bogard, are there many people who have gone onto lands that contain timber in this area that you are acquainted with, cleared up the lands and made farms of them—homes?

A. Yes, sir.

Q. In small tracts, 160 acres, or, as your father did, on forty acres?

A. Yes, sir.

Whereupon witness testified, that in his work as a timber cruiser, he ran the lines and became familiar with the various parcels of land. He did a good deal of that work for different people. He has come across settlers in the hills there or on the benches, and in these even numbered sections near the railroad lands, he found them settled all over the country. These lands are adapted to fruit raising and he knows they are good for that purpose because he has seen fruit growing on sim-

ilar lands. He found on these or similar lands, grains of all kinds and vegetables.

Q. Mr. Bogard, in your opinion what has been the effect of the railroad company's failure to sell the lands in this grant in tracts of 160-acres to actual settlers at $2.50 an acre, in compliance with the conditions of the grant.

A. Well, it has been a detriment to the country. It has kept out schools and roads, kept out business in the towns, owing to the fact that they don't get the market for produce that might be grown on this similar land. It has held the country back in every way that settlement could, or non-settlement.

Q. That is brought about by keeping out settlers?

A. Yes, sir.

Q. Now, Mr. Bogard, from your knowledge of this country, please state how the development has taken place as to the lands that have been first taken up by the people who went in there some years ago, and as to the lands that have gradually come under cultivation and settlement.

A. Well, of course all I know about the land that was taken up is what I get from the records, some of it, before my time; but first the donation claims, and they followed along the river, on the bottom land, or along the military wagon road. That was one view possibly in locating there. And then came the homesteaders, pre-emptions, and they worked on from time to time

until they have taken all the public lands.

Whereupon witness testified, that the bench land or hill land there has been put into cultivation or clearing, homes are built all through the mountains. The first lands taken were those that were easiest put under cultivation. The settlements and cultivation have gradually extended further out from the streams and up into the hills and into the more timbered sections, and have extended clear through, from the river to the coast. There has been an increase in the demand for settlement lands by people who are seeking homes to engage in the farming business. There has been a great demand for lands and the demand has increased in recent years, in the last six years. He knows of some people that have attempted to buy this railroad land, and knows of settlers that are on it now and are making a home on it.

Whereupon, upon cross-examination, witness testified, that his father's homestead is in section 12, township 25 south, range 5 west, about sixteen or seventeen miles from Roseburg north, and five miles from Oakland southeast, and about five miles from the railroad. His father is not residing there now, having sold the place about five years ago. He had 200 acres of which 160 acres was a homestead. He cannot tell how long ago it was taken, but it was taken before they settled in there, a good while ago. He is twenty-six years old past, and this homestead must have been taken in the early settlement of the country. It was taken, he would say, thirty years ago. There are quite a good many do-

nation land claims along the rivers in Douglas County. Roseburg is the county seat of Douglas County and is a town of about 6000 inhabitants, situated on the railroad, and the country around Oakland is an old settled country. His father did not take up a claim under the timber and stone act, but witness got a quarter section under the timber and stone act in Curry County in section 23, township 35, range 14 west, which he took four years ago for the timber that was on it. There have been quite a good many entries taken under the timber and stone act in Douglas County. It is pretty hard to say whether there were more quarter sections taken under the timber and stone act of these timber lands than under the homestead act. He does not know as there has been a great deal of difference. He would judge there would be about half and half—that is, he thinks that of the timber lands of Douglas County, so far as he knows from his knowledge and acquaintance with the records and with the lands themselves, about one-half of the number of timber claims have been taken under the timber and stone act, and the other half under the homestead act. In going over Douglas County and these various townships of which he speaks, he was part of the time in the employ of timber people, cruising part of the time. When he first began he was with the Gardiner Mill Company, located at Gardiner, on the coast, at the mouth of the Umpqua River. He then worked some with the cruisers of C. A. Smith, with his cruising parties, something like five or six months, and worked with the Gardiner Mill Company off and on for four

years. They had a lot of land that they bought, ranches and timber lands and all. They bought off the timber of some of them, and some places they bought the timber, ranch, farm and all; some places they bought stumpage, and in other places they bought the title. As a rule, these timber people did not buy the title—they have up to late years but the last year or so they are not buying as many titles. If a man has a sawmill, he will buy stumpage somestimes, but when he has not a sawmill and wants to buy timber, he will buy the title if he can get it. He has cruised, he expects, for a thousand different individuals and would not undertake to name them here. He could name a good many different people. He has not followed the business of locating people on timber quarters very extensively in Douglas County, most of them were taken before he went into the timber business. He has cruised for probably a thousand individuals and has located some of these people. He does not know how many he has located on timber claims since he has been cruising, but has located a few—probably thirty or forty. The timber cruisers for individuals do not charge so much for finding the quarter that has good timber on it and then go out and ascertain or cruise the amount of timber and then bring the buyer and seller together. Most of his locating has been down in Curry County and northern California, in townships 40 and 41, ranges 13 and 14 west, and on up the coast. He cruised for these individuals simply because he was in the business. They wrote out here for someone to cruise a quarter of timber or a piece of land

they had bought. They had land cruised to ascertain how much timber there is on it, to know the character of the land and how much it might be worth. They like to know about how much timber there is on it, as they might want to sell it, mill it off or clear it off. They cruise to find out the stand of saw timber there is on the quarter, if it is a timber quarter they have and are handling it for the timber, buying it for the timber, selling it for the timber, but this is not always the case in cruising, the main purpose of cruising is to ascertain the amount of timber there is on a quarter section. He cruises what timber there is on it, what he actually thinks it would saw out, to the best of his knowledge. It doesn't make any difference whether his cruising is for the buyer or seller. He has been at this business for the last four years in Douglas County and has made a living at it. He does not know about how many million feet of saw timber he has cruised in the last four years, but a good deal. Seven or eight million feet is a good stand of timber to a quarter section and the best that he has cruised. The average stand of timber per quarter section in Douglas County is about two million feet, and such a timber quarter with two million feet is not very saleable, but is considered merchantable—it could be sold. The best price that he had known people to pay for timber quarters in Douglas County is four thousand dollars. In his travels through this timber belt, there is an old cabin here and there, occasionally one on land that has been homesteaded, that has been abandoned. These timber claims are all the way up to the summit of the

Coast Range. The Government lands are practically all taken in Douglas County, here and there a quarter—very scarce. He does not think that Douglas County has some of the best timber in western Oregon, the best timber, in his judgment, is in Coos County, adjoining Douglas County. Douglas and Lane counties are both considered good timbered counties, and there is pretty fair timber in them, but they are not the best. Speaking of agricultural land, he means that after the timber is removed these lands would be agricultural to the per cent that he has stated, in his judgment. There has not been a great deal of demand in the last three or four years for timber in Douglas County. The demand was greatest, within his knowledge, about seven years ago, and began to be active about 1902. Before that time he does not know whether the timber in Douglas County was considered worth much or not, or worth anything. He doesn't remember before that time, he was not in business and does not recollect. Before timber became of commercial value, in clearing the land they did not try to save much timber until there were some fire restrictions. He did not know who caused them, but there were fires. Until timber was worth something, if they did any clearing they burned it up and they are doing it today. In a great many places, they are burning up good saw timber today. They are burning up timber to clear up the land. They are clearing up some of these good timbered quarters. Those that are living on there today are burning the timber, clearing it down and logging it together and burning it. They have all

the way from three to fifteen or twenty acres cleared on some of these timbered quarters. They slash the timber down, aim to haul it as near together as they can, and then burn it. They slash saw timber from three to six feet at the bottom or butt of the tree, if it happens to be near where they are improving. They are working right on through, he does not think they are saving the timber. They leave no timber standing. Some places they leave here and there a tree, but mostly they are clearing it, they generally start in on the brush land or where there is less timber, generally start in where there is no heavy saw timber—naturally would do this. He does not know whether they leave the saw timber until they have cut the other down, but they are clearing it, logging it off, he knows a good many cases where they are taking it off. These clearings he speaks of are from three to fifteen acres, and some of them have as high as forty acres, they have not cleared that, because it has been on a burn or something of that kind, some of them that have more land cleared, have taken advantage of an old burn. His business is that of timber cruiser and real estate, and his partner is Finis Dillard. He does not know of a timberman down there who has located four or five thousand people on these railroad lands, or who induced a lot of people to file applications, or tender applications to purchase this land at two dollars and a half an acre, and then got them to intervene in this suit. He is not personally acquainted with a man named Leavengood at Myrtle Creek, but knows of his operations down there, but does not know

that he induced three or four thousand people in Douglas County, and who lived abroad, to come in there and make application to purchase these timber lands. He never saw any of them on the land, never saw him or saw him going out with any of them. He does not know of any of those applicants having applied for valuable timber quarters in Douglas County, and he never cruised any of these lands for these so-called applicants, nor applied for a timber quarter himself. The land was off the market before he knew anything about it. He never applied under this act of Congress that they are trying to enforce here or declare a forteiture under. He took a homestead in section 26, township 22 south, range 4 west, about thirty miles north from Roseburg on Elk Creek, a tributary of the North Umpqua. It had about three million feet of timber, most of it on an eighty. He took it about a year ago and then relinquished it for $925.00, and the man to whom he relinquished it filed on it and is still there. There was about three million feet of timber on the hundred and sixty acres. The man that he relinquished to is a single man and is making improvements on it. He is putting in cultivation about fifteen acres, or will have in the spring. This land is up on the bench, up on the side of the mountain. The man is clearing it himself, some small brush on it, perhaps half a dozen trees on this fifteen acres. He felled several trees of saw timber there. He doesn't know whether the man can sell his timber if he gets his title, he might. The stumpage in that country out there is worth about sixty-five cents, taking large tracts. There

are no large timber holdings in Douglas County that he knows of, that he had anything to do with. He never cruised any of these large timber holdings out there.

Whereupon, upon redirect examination, witness testified, that that land in this general area with which he was acquainted was originally, judging from the present state of it, covered with more or less growth of timber. There is timber scattered here and there of different kinds on most all of the lands, excepting the river bottom land. The river bottom land would cover just about the area that was taken with donation claims, that is about on an average. Of course, there were some donation claims that ran up on the hill to take in timber, but that would be just about an estimate. There is a wagon road grant in Douglas County, running from Roseburg to the coast, the Coos Bay Military Wagon Road, and covers practically township 28. He does not know just how wide that grant was, but something like six or eight miles, he observes the yellow marking through Defendants' Exhibit 259. It is principally in townships 28 and 29 from range 6 to the end of the grant, and he notices the marking "Coos Bay Military Wagon Road." Most all of the people that filed on timber and stone claims were non-residents of the state. The original applicants were 90 per cent of them non-residents of the state. A good many scrip locations have been made in Douglas County, but not as much as in some of the other counties, he thinks not as much as in Coos County. Those who purchased under the timber and stone act were mere speculators in timber. There

has been a change in recent years, as the values of land have increased, in the purchasing, or rather in the selling of timber. Generally if a party has a timber claim, he wants to know what the value of the land is and if there is a portion of it that can be reserved for good farming, without too much timber on it. That has occurred in the last three or four years. In the last five years, land in that section of the country with which he is acquainted has gone from twenty dollars an acre to two hundred dollars an acre, and on up close to five hundred dollars; but the land in the raw state has gone from twenty to two hundred dollars an acre. The timber has not increased in value in the last five years. In fact, one cannot get as much for timber now as he could five years ago. The average stand of timber on these lands with which he is acquainted would be about two million feet, taking the timber land, land that has timber on it, on an average, to a quarter section. Four million feet is a very good claim in through that country. There are breaks in the timber by reason of lack of growth of timber or burns. There are very few sections that are all covered with timber, very few quarters that are all covered. There are either four or five acres to the quarter that are open, sometimes more of course, but take it on the timber claims there are very few sections that are entirely covered with timber. In recent years there has come up small brush, such as hazel and arrow wood, on the open places. Eighty acres of his homestead was timber. The rest of it was scattering trees, but all fair land. There is not an acre of rock

land on it. There is probably thirty five or forty acres, at least that much, of it that can be cultivated. The man who purchased this land from him is using it as a home and is staying right there and improving it, and makes his living on that place. He has been on there less than a year, he has not raised a crop, but then he is preparing to put in a good crop this coming spring.

Whereupon, upon recross examination, witness testified, that there was about three million feet on this eighty acres of his homestead. There was about forty thousand feet to the acre, eighty acres of that. If the whole quarter section had been as good as the eighty, there would be about six million feet on the quarter, but it is like most of them, the timber is in patches. The value of these unsold lands on an average, through where he has traveled and over which he has gone and with which he is acquainted, in his judgment, taking into account the timber and soil and everything that enters into the value of a piece of land, would be from fifteen to twenty dollars an acre, possibly twenty-five—some of it—take it on an average. There is a portion of these quarter sections of unsold railroad land that is worth as much as a hundred dollars an acre. It is the land as land that gives them that high value at the present time. He means that he could sell some of these quarter sections for a hundred dollars an acre that is not covered with timber. There are forties of these quarter sections which are not covered with timber, that he could sell for one hundred dollars an acre. He does not suppose one could find a quarter section right through that

one could sell for one hundred dollars an acre, but thinks one will find portions of them that can be sold for a hundred dollars an acre. There is a forty in township 28 south, range 5 west, about twelve miles from Roseburg, that one could sell for a hundred dollars an acre in its present state. That is creek bottom land. There is as much as two hundred acres of creek bottom land. That land is worth from two hundred to three hundred dollars an acre, and the land around it is old settled land, part of it under the donation claim. One can come down the Willamette Valley around Lane County and buy cleared land for from one hundred to a hundred and fifty dollars an acre; but one cannot buy much bottom land around Roseburg, out towards Myrtle Creek, for less than a hundred dollars an acre. One can buy some of that hill land for sixty, seventy or eighty dollars an acre, but there will be some brush on it. One would have to pay for land over about Myrtle Creek, around the railroad, up to two hundred or three hundred dollars an acre, that is where there is an orchard on it, some of it, and some of it has no orchard. A man doesn't like to cut off a portion of his place from the orchard and sell it. He thinks two or three hundred acres around Myrtle Creek would sell for two hundred or three hundred dollars an acre; it would, if it was in the bottom. Around Sutherland there is quite a valley, about a mile or two wide and eight miles long, that land is all cleared and level. He does not suppose there is as much as two hundred acres of it irrigated. A great deal of it is being put out in young trees from one to four

years old, and is being held and exploited by land companies, by Frank Waite, who has sold some of it as high as seven hundred dollars an acre. He is not acquainted with the land in the Rogue River Valley around Medford, but that Sutherland land is not like this railroad land, that is out in the mountains. There is some of this railroad land, he will say, that is better than that Sutherland land that they have in fruit there—but, take it as a whole, it is not. One will find a forty, some places a hundred acres on a quarter, that is better than the land of Frank Waite. Some of it has timber on it, some of it is not very heavy, some of it is quite heavily timbered. He does not want to create the impression, by his testimony, that the land in this grant is generally of the character of the land around Sutherland. This land is spotted all over, some of it black heavy soil, even better than that land. That is not good land around Sutherland. He thinks the grant all over would average in value, taking everything into consideration, as far as he knows, probably somewhere from fifteen to twenty dollars an acre. If a man could get a good quarter section of this timber land for two dollars and a half an acre, he does not think he could sell it for more than fifteen or twenty dollars an acre, if there was timber on it, to some timber company. He is sure he could not. If he wanted to sell it, perhaps he could sell it, there is a demand for land, that a man can sell any kind of land less than twenty dollars an acre any time. He does not know how much land he sold last year, but he thinks a couple of thousand acres. The title has passed. His

partner is Finis Dillard, and they operate a real estate business in Roseburg, and have no men working for them. He has only been in the real estate business the last seven months. He did not buy out a business that had been already established. He and his partner started up together; his partner had some few lists, but very few. Real estate has not been very active during the last year, rather quiet.

Whereupon, on redirect examination, witness testified, that if the railroad company had only a two dollar and a half interest in this land and is permitted to retain it at a value of fifteen to twenty dollars an acre, it would make the same profit that an individual would who would purchase the land at that price and sell it at fifteen or twenty dollars an acre. It is the fault of the company if they have paid taxes on it for thirty-five or forty years. The reason why this two hundred acres of railroad land near Roseburg remains unimproved is that the railroad company won't sell it. There are other small tracts in the same township that are equally good. These tracts are about eleven miles from Roseburg by wagon road, and less than that on a direct line.

Whereupon B. F. SHIELDS, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-six years old, resides at Roseburg, Douglas County, Oregon, and has lived in that county thirty-eight years. For the last ten years he has been a timber cruiser most of the time. A timber cruiser is supposed to go out and look claims over, estimate the timber, and see the character of the land, etc., and report as to the

character of the land, the amount of timber on it, and the agricultural value of the land—at least he does so. As a general rule, he estimates the agricultural value of the land before and after the timber is removed. He was raised on a farm in township 28 south, range 8 west, Douglas County, Oregon, about fourteen to sixteen miles west of Roseburg. This was his father's home of eighty acres of rolling land, partly timber—oak grubs. His farther was engaged in general mixed farming, and cultivated on his farm thirty to thirty-five acres. His father had a family of nine children. Witness took a homestead in section 30, township 25 south, range 2 west, and sold that to Frank E. Alley of Roseburg, who sold it later on. There is a fellow who has it rented, raising hay and stuff on it, using it for agricultural purposes. Witness filed on that claim April 1st, 1902, and sold it in 1907, he thinks it was. It has been used for farming purposes all the time. He had about ten or twelve acres cleared in one piece, and six or eight acres in another piece, and raised hay and garden stuff, potatoes, corn and vegetables of all kinds. He had a family. Hay and garden stuff are generally raised in that community; some fruit—but just for their own use, very little fruit. They raise corn there, and the hay is mostly oats, wheat and timothy. Referring to "Defendants' Exhibit 259," he is acquainted with these unsold railroad lands and the lands under contract, especially the unsold lands marked in green from township 21 south, ranges 7 and 8 west, located on Smith River, and in his opinion probably 35 to 40 or 45 per cent of township 21

south, ranges 7 and 8 west, of the unsold lands of the company could be utilized for tillage; and that in the next township (22), about 30 or 35 per cent would be suitable for plowing and tilling, and about 25 per cent of township 23 south, ranges 2, 3 and 4 west. He would think that in township 24 south, ranges 2 and 3 west, probably 35 per cent would be suitable for tilling and plowing. In 24 southwest, there is only part of that, about half, the south half, which runs up pretty high into the mountains, but it would do for grazing land. Township 25, ranges 1, 2 and 3 west, there would be about 35 per cent that could be tilled, and in township 26 south, ranges 1, 2 and 3 west, from 25 to 30 per cent could be rendered suitable for cultivation. Township 27 south varies. That township would vary from 25 to 35 per cent, somewhere in that neighborhood, that could be rendered suitable for cultivation. He is acquainted with ranges 2 and 3 mostly. In township 28 south, ranges 2, 3, 5 and 6 west, he is acquainted with the unsold lands of the company and they would run about the same as the others. It might be as one gets closer to the valley that it would run a little higher. In township 29 south, ranges 1, 2, 3 and 4 west, they would average about the same as the others. Of course, as one gets closer to the valleys, the percentage of land that could be rendered suitable for cultivation would run higher—further out it is not so high. He is acquainted with ranges 1, 2 and 3 in township 30 south, and it will average about the same as the others. In township 31 south, ranges 1, 2 and 3 west, he is acquainted, and the

lands in township 31 would range pretty well. It is pretty well open in township 31, there is a good deal of open land, probably 40 per cent of that in township 31, range 1 west. He is acquainted with some of the lands in township 32 south, ranges 1 and 2 west, and this would run from 25 to 30 or 35 per cent, somewhere in that neighborhood, as agricultural land. He is very little acquainted with any of the lands in township 33 south, and is but little acquainted with any of the lands south of that, in the grant. He has been through there. He is acquainted with the railroad lands on the west side of the railroad in township 25 south, ranges 8 and 9 west, some of that would run 40 per cent, while others would run about 30 per cent. He is not acquainted with any of the other townships on the west side of the railroad, to speak of. He thinks that the average that he has given would generally carry through as to one hundred and sixty acre tracts of railroad land, selected by forty-acre legal subdivisions, but not necessarily by quarter sections.

Q. What is your opinion as to whether tracts of land such as the railroad land is that you are acquainted with in this area as to being suitable for settlement purposes, for the purpose of a man going on the land with his family and making his home, engaging in farming, earning his living?

A. He can. He has got to first clear the land, of course, it takes a little means to start with.

Q. He would have to have something to start?

A. Yes, something to start with. Of course, he could go on there and work out part of the time, you know, and then part of the time on the place.

Q. Doesn't that same condition prevail as to any raw land that a man would go on?

A. Yes, sir; it does, if he hasn't got means.

Q. Are there settlements on lands of similar character to these unsold lands of the railroad company that you have been over?

A. There are, yes, sir.

Q. I mean by settlements, people actually living on the lands and farming them, making their living there?

A. Yes, sir.

Whereupon witness testified, that these people go in there and build homes and clear up the land. They have some stock, such as that, raise hay and garden stuff. These lands generally raise fruit in that area, most all kinds of vegetables, and most places they raise corn, wheat and oats. Away high in the mountains sometimes one cannot raise such as tomatoes, but they can raise most of the stuff. He has seen wheat, oats and timothy raised there, mostly grains, and apples, pears, prunes, peaches and cherries, potatoes, cabbage, carrots, squashes and rutabagas.

Q. In your opinion, Mr. Shields, what has been the effect of the railroad company's failure to comply with the conditions of the grant, failing to sell this land to

actual settlers at $2.50 an acre, in tracts of 160 acres?

Mr. Fenton: Objected to as assuming that the railroad company has failed to comply with the terms of the grant.

Q. That is, the effect upon the community.

A. Well, it has been tending to hold the people back and keep out schools, and the building of wagon roads.

Q. Has it affected the settlement of the country in any way?

A. It has.

Q. Materially or not?

A. Materially; yes, sir.

Q. Now, Mr. Shields, there have been some questions asked in this case, and some testimony relating to the manner in which the lands have been taken up in the areas covered by this grant, or in part of the area covered by this grant, that is, of homesteads and timber and stone claims. Now, will you please tell what your experience has been with reference to the people who have taken up homesteads in this country—this general country?

A. Why, in what way? What do you mean? In what way?

Q. Have people generally abandoned their homesteads?

A. Why, no; not as a general thing they don't.

Whereupon witness testified, that no residence what-

ever was required for timber and stone entries, and he thinks most of the lands transferred by entrymen from the Government obtained their title under the timber and stone act. These people who filed on these timber and stone claims were principally from the East and Washington, the most that he knows anything about. They were from all over the eastern countries.

Whereupon, upon cross-examination, witness testified, that he is a timber cruiser by profession, and has been so practically the last ten years. He has not cruised for any timber company in Douglas County, but mostly for individuals. Timber first became an object of inquiry, as he remembers it, about seven or eight years ago, somewhere along there. In places, these lands with which he is acquainted, over which he has been, are considered fairly good timber lands. These unsold railroad lands, taking them on an average, would carry something like two million feet or a little better, not much more than that, take it as an average on the whole. When a claim carries two million feet of saw timber, it is considered an average timber claim for that country. The highest stand of timber on any quarter section which he has cruised or known of being cruised in Douglas County, would run to eight million feet—some of them ten million feet, and the value of such a claim that carries ten million feet to the quarter section depends upon the locality, etc. If it is on the coast where there are saw mills, probably one will get a dollar and a half to two dollars a thousand feet, but take it west of the railroad, if one can get fifty to seventy-five cents he would be

doing well. That would mean selling the land as well as the timber. They generally buy the land and all together, as a general thing. He has known of very few people who have taken homesteads, proven up on them either by communting or living the five years, and then selling the land to timber people.

Q. There are cases of that kind, though, all through this timber belt?

A. I suppose so.

He means that this per cent of agricultural land mentioned by him would be agricultural after the timber is removed or cleared up.

Whereupon, upon redirect examination, witness testified, that there has been an increase in the value of farming lands in the last five or six years in his vicinity. In the last four or five years there has not been much demand for timber, it has been about on a standstill. In fact, he does not believe one could sell it for as much now as one could four or five years ago.

Whereupon JAMES S. BAILEY, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-one years old, resides at Ashland, Jackson County, Oregon, was born in that county and has lived there most of the time. He was born in Rogue River Valley, township 38 south, range 1 west. His father was a farmer and rancher and farmed in different parts of Jackson County. He owned a farm in the Rogue River Valley for a while, farmed in different parts of that valley, and then in 1894 bought a ranch on

the Ashland-Klamath Falls road, twenty-four miles east of Ashland. It was what one would call a mountain ranch, consisting of one hundred and thirty-three acres. It was the northwest quarter of the northwest quarter of section 4, township 40 south, range 4 east, and the south half of the southwest quarter of section 33, in township 39 south, range 4 east. It was rolling land, some of it was rocky. There were small patches of good soil on the place, and perhaps out of one hundred and thirty-three acres there was thirty acres of what one would call good tillable soil; this hundred and thirty-three acres was all the farm that he had, and he farmed about thirty acres of it. His father earned a support for himself and family on that land, and had no other means of support. Section 33 was all railroad land excepting eighty acres that his father owned in that section, who had part of it fenced in, made application to the railroad company for it, but for some reason did not get it. He does not know the exact date of the application, but it was about 1888, and the company replied that it would send an appraiser out and appraise the value of that land, and the company put a price on it of seven dollars and a half an acre. At that time, the lands were selling around there at two dollars and a half an acre and his father felt that the company was holding him up a little, and he tried to see if there was not some way of what he called getting fair play. Later on his father offered the railroad company seven dollars and a half an acre, with the result that he could not get it because the land was withdrawn from the market. He

made this offer somewhere along in the 90's. It dragged along for quite a while before his father finally decided to pay seven dollars and a half an acre for it. This land that his father applied to purchase was agricultural land, fit for nothing only for farming purposes, and that was the use his father had in view, the only thing he wanted it for—for farming. Witness farmed quite a little in different parts of Jackson County. The first farming that he did for himself was on Emigrant Creek, about eleven miles east of Ashland, in townships 39 and 40, range 2 east. He farmed there for three years and then went to Klamath County on Spencer Creek, and was there for a year or two. He farmed the old Spencer ranch one year, and in 1899 he bought a place on Corral Creek on the Ashland-Klamath Falls road, twenty-two miles east of Ashland, consisting of a hundred and sixty acres in section 6, township 40 south, range 4 east. He farmed that for four years. There was not much land cleared on the place when he took hold of it. He cleared considerable, and in the four years that he had it, he added, he thinks, twenty acres to the agricultural part of it. That was a timbered tract, portions of it was heavy timber. He left his father's place down in township 40 south, range 4 east, in section 4, in 1890. He worked on his father's farm there continuously from the time his father bought the place until he left home. In his experience, not only the flats that exist along the rivers in Jackson County, but the high lands and hills and mountains there, will produce most anything one will plant, except lemons and

oranges. Apples do well, vegetables of all descriptions do well. From his personal experience, he knows that lots of the higher ground there will grow good timothy, any of it will grow good grains, good fruit—grow orchards, that is, to a certain elevation. The elevation where his father lived and where he lived, in what is called the Jenny Creek Basin, fruits do well there, such as apples, plums and pears. The altitude of Klamath Falls is forty-two hundred feet, and there is farming there at that altitude, where they raise alfalfa and grains of all descriptions, apples, potatoes and onions. They raise them for the market. He does not remember the exact elevation of his father's place in township 40 south, range 4 east, but thinks it was thirty-four hundred feet. His father raised everything in the way of grain, vegetables and hay. Vegetables do as well or better there than they do in the lower altitude. His father's farm was in what is known as the Jenny Creek country. It is known as the old Jenny Creek Station on the road between Ashland and Klamath Falls. It was the old stage station. He does not think his father ever kept the stage station there while he was there. It might have been used that way before his father went there, he could not say as to that. This land that his father bought was homesteaded by James Purvis. Referring to "Defendants' Exhibit 259," witness points out township 40 south, range 4 east, and states that Shake is the name of his postoffice, and that he is familiar with the country in general and is personally acquainted with all of it—that is, townships 38, 39, 40 and 41 south,

ranges 1, 2, 3, 4, 5, 6, 7 and 8 east. Eight east is not within the limits of the grant, excepting as to a very small area. He has been pretty thoroughly all over these townships and the greater portion of it that is in the Government sections in particular, he has looked that out by tally in five-acre tracts. He had been there on different occasions. He located a good deal of country out in townships 38, 39 and 40, ranges 6, 7 and 8 east, and over in township 41, range 8 east, and then he has worked for different timber companies cruising through that country, all the timbered portions of it, and has been on practically every section of it, has been over it thoroughly in the even sections, and in some instances the odd sections. He notices the blue color shown on this map in townships 39 and 40 south, which indicate lands that have been deeded by the railroad company. He has been thoroughly over townships 38, 39, 40 and 41, ranges 6 and 7 east. He will start in east and come back on it—on 5 east, and in ranges 4 and 3 east. In 1 and 2 east, he has looked that over pretty carefully in different ways. When he lived in township 40, range 2 east, he lived there for three years and had stock on the range, and was over the range continually, and had looked over different sections in township 40 south, range 2 east for people. He was looking after them with a view of getting a homestead in that country. He has been in townships 38 and 39. In 3 east, he was never thoroughly all over except on the east side of 38 and 39 in 3 east. He was looking for timber in that country for different people. His first trip in

there was with a man by the name of Angell. He thinks Angell had something to do with the Hopkins estate. Angell came to that country with the Pierce Brothers and bought up lands for the Hopkins, and they were the ones that bought that tract for Hopkins in that country. Witness went up into townships 38 and 39, range 3 east, and worked in there about three months with Angell in that country up there. He knows about townships 38, 39, 40 and 41, about as well as he could any country. He always looked forward to the possibilities of agriculture and farming whenever he was in the country, and as a timber cruiser it would be a part of his duty to classify the soil and the land. They make that up in their notes, what per cent of it would be fit for agriculture and grazing. He could take the blue prints of each township and point out practically every forty acres in it which would be suitable for cultivation. There are sections in there through townships 38, 39, 40 and 41, ranges 3 and 4 east, that he presumes with a little time he could name. He would say that fifty per cent of it could be used for cultivation. Now, when he says that, he speaks from people that he knows have gone in there and removed the timber off the lands. For instance, in township 38, in township 40, range 8 east, parties went in there, and on land he did not himself at that time think was any good, they took the timber off and put it in cultivation and are making a living there. Also old man Clyder, who lives at Green Spring Mountain, on the Ashland-Klamath Falls road, the old man has been there, he does not know how long, but ever since

he can remember, and his land is a side hill, he thinks he has a hundred and sixty acres on a side hill, and it is pretty stony and rocky, the old man has made a living on it continuously. He raises fruits and vegetables, some hay, keeps a few milch cows, a few pigs and chickens. In the territory west of Ashland and west of the base line or the meridian line, he is not so well acquainted till one gets into Josephine County. In Josephine County he is pretty thoroughly acquainted with townships 39 and 40 south, ranges 7, 8 and 9 west, and has made a pretty careful examination of those lands from being employed there as a cruiser and locator on the unsettled lands. He looked at a great many sections there that are patented. In townships 40 and 41 south, range 9 west, he has made detailed cruises on all of them, elevations on every five acres. In township 40 south, range 8 west, he has been over pretty thoroughly and he would say that practically all—he would say 75 per cent of township 40 south, range 8 west can be cultivated. In township 39 south, range 8 west, all of that country in there is settled. The yellow markings on "Defendants' Exhibit 259" indicate lands that were lost by prior entries. Pointing to the extreme western tier of sections around Kerby, 75 per cent of it is fit for agriculture. He would say 40 per cent of that extreme western tier anyway, in his best judgment, would be suitable for agricultural purposes—speaking of the entire township. In townships 38 and 39, he is thoroughly well acquainted with them, and take it all into consideration, he would say that anyway 40 or 50

per cent of it could be cultivated. Some of it is rolling, but then it is good soil. The soil is good, free from stones. About the only thing one would have to do to put it in cultivation, would be to take the timber off where there is timber on it. It is not all timbered, the timber runs in bunches, it is some scattering. A section occasionally has a good stand of timber on, and may be the next section will have scarcely any on it. He is not well enough acquainted with the other sections or townships, or parts of townships, there, to pass his opinion as to the amount of agricultural land on them. He has been over a portion of townships 38, 39 and 40, range 6 west, but he has not been over this thoroughly enough to pass judgment on the agricultural land there is on them. He has been practically all over the county, but not to look it over carefully.

Q. Now, Mr. Bailey, if these unsold lands of the railroad company were divided into 160-acre tracts, and taken by a settler for the purpose of making it a home, and engaging in agriculture, what percentage of those 160-acre tracts do you think would be suitable for that purpose, that a man could go on and successfully farm in a modest way, sufficient to earn a living for himself and family, and the tract need not be in quarter sections, but by legal 40-acre subdivisions lying contiguous?

A. You want the percentage?

Q. The percentage of 160-acre tracts, in your opinion, in this area that you are acquainted with?

A. In my best judgment, 80 per cent of it.

Q. There are sections, I presume, that none of it would be susceptible to agriculture?

A. There are sections that I do not think any one could go onto and make a living, and then there are sections again that are all good tillable land—take the whole section. Of course, 20 years ago, when there were few people in the country, why, they did not look after those things as closely as they do at this time.

Whereupon witness testified, that the demand for lands for farming purposes by settlers, homesteaders and people of moderate means who are looking for farming lands has been on the increase the last four or five years, to his knowledge, rapidly increasing. There are settlers in several places on lands that he has mentioned, some of them are earning their support from the lands—in fact, most of them are.

Q. In your opinion, Mr. Bailey, what has been the effect of the railroad company's failure to comply with the conditions of this grant in selling their lands to actual settlers at $2.50 an acre in tracts of 160 acres, in the localities that you are acquainted with in Jackson County, and Josephine County?

A. It has been discouraging. It has had a discouraging effect.

Q. In what way, Mr. Bailey?

A. When people go out to look for a homestead or a piece of land that they can get hold of, acquire title to, make a living on, and they find it is railroad land and it is not on the market, they become discouraged.

Q. Has it retarded the settlement, then, in those counties?

A. To a certain extent, yes.

Whereupon, on cross examination, witness testified, that the Ashland-Klamath Falls road has been a public highway as far back as he can remember, and is one of the oldest roads in southern Oregon. They go over the Cascade Mountains between Rogue River Valley and Klamath Falls, also by what they call the Dead Indian road at this time, the road has been open there ever since he can remember, but they have not been traveling it a great deal until the last ten, twelve or fifteen years. The road that he speaks of as the Ashland-Klamath Falls road is a road that has been known to the travel and to those counties and to the state for a great many years before his time. His first recollection of the country is that the first stage station out of Ashland on the road to Klamath Falls was at Howard's. That is right on the west side of the top of the divide, Green Springs Mountain, about sixteen miles out from Ashland. The next station was at the old John Lacy place, which witness bought later on, in section 6, near Corral Creek, twenty-two and a half miles from Ashland. Then the next station is the old Parker station, just across the line in Klamath County, thirty-two miles out from Ashland, and the next one is the old Cooper station, about forty-six miles from Ashland. They carried the mails over this road for many years. The military operations in the Modoc war were in 1873, a little before his time.

He was not old enough to have any knowledge of that. He had been told there was a trail that goes out by Buck Lake—that is what they now call the Dead Indian road, Horseback trail, and this was the old stage road at that time. It is better now than it used to be. It is his understanding that they are planning to build a road from Medford by way of the Forest Reserve over to Crater Lake, but this would be, in his opinion, rather a round about way to get to Klamath Falls, but he knows there was such a project as that and that both counties had adopted it and the state undertook to make an appropriation to cover it, and that was defeated on the ground that it was unconstitutional. Medford was very much interested in that. The place that his father owned had one hundred and thirty-three acres and he does not remember how long ago that homestead was filed on or taken, and he never looked it up from the records. He knows that Mr. Purvis lived there for some time before his father went there, from the improvements there were on the place. Forty acres of it is a fraction, he thinks it would be lot 4 in the even section, and then there was eighty acres in the railroad section. Purvis took that before there was any railroad grant, he thinks. The grant bears date July 25, 1866, but the road was not built or definitely located, he supposes, until after Purvis took his homestead, at any rate, the railroad did not get this piece of land that Purvis homesteaded. There was no land in cultivation on the Purvis homestead at the time his father went onto it. There was a log house and barn, his father put on fences, and later built a new

house and barn and cleared perhaps thirty acres on Jenny Creek, not all right on the creek bottom, it was on the creek, and then back up on the bench, the creek ran through it. There was about six acres he would think, right on the creek bottom and the rest of it lay up west of the creek, up on the bench land, perhaps from fifty to a hundred feet above the creek bottom, sloping toward the creek bottom. Some of this land his father cleared had pine timber on it, scattering pine. There is underbrush out there in places, but as a rule it does not prevail in Josephine County or in the western part of the grant. What little timber there is on that particular land is generally pine. Pine predominates in the Jenny Creek country, there is fir mixed through it. The best sugar pine and yellow pine in Oregon stands between Jenny Creek and Klamath Falls, and that is regarded as the best sugar pine and white pine in Oregon or on the coast, and is said probably to be the best in the United States. He thinks Hopkins bought forty-one thousand acres of fine white pine and yellow pine and sugar pine.

Q. Well, that is the character of the timber that I speak of?

A. Yes sir.

His father kept a few cows and hogs and raised a few horses to sell when he was making his living on this Purvis homestead, he raised draft horses, just ordinary farm horses. His father had stock—cattle—that ran at large, but not over thirty or forty head of cattle that

roamed over that country. He sold cattle for beef, usually figuring on turning off from a hundred and fifty to two hundred dollars worth a year. He did not always turn off hogs for the market, he almost always made bacon of his hogs for his own use, and had some to sell to the people that traveled along the road, that is, to travelers who would come along, and he would sell them bacon by the pound as they might need it, and in that way he would sell eggs, butter and chickens, that would be to the travel that would pass over this Klamath Falls and Ashland road. Three years he dairied and sold his butter in Ashland, then milking ten cows—he thinks it was in 1902 and 1903, or 1904, somewhere along there, he would not be right sure as to the time. in summer these cattle his father had would usually be turned out on the range and go wherever they wanted to—very seldom would go over two miles from home. No one that he knew of herded cattle out into these mountains or up Jenny Creek. A few ranchers that were scattered along this road did keep some cattle and as a rule they grazed out everywhere, wherever they wanted to, wherever they would choose to go, and they were at liberty to go. These railroad lands were all unfenced. His place was not up Jenny Creek from there, it was right west about a mile and a half from his father's place, it formerly was a homestead, he could not say how long it had been taken. John Lacy took it as a homestead and later he sold it to Grenville Naylor, and witness bought it from Naylor. Lacy was the man that kept the stage station and witness kept the stage station

for a year. When he was keeping the stage station, he simply rented them a barn, fed their hostler that took care of the horses, and part of the time they took their meals there, part of the time they took breakfasts at his place. The travel was not very heavy over that road at the time he kept that station. The stage went by there twice a day, once each way, it was a two horse stage. There was about six or eight acres cleared on his place when he went there and he probably cleared between twelve and fifteen acres. The lands that he cleared were timber lands, and part of them very heavy, it was pine timber, and what he did not make into wood for his own use he burned up. He thinks that everything that they raised there they sold to the travelers along the road—practically everything that they raised, and he also kept stock, too. He thinks that the most cattle for beef or stock that he ever sold in any one year while he was there, was ten head. In his estimate of all these lands with which he is acquainted that would be agricultural, he referred to lands after the timber was cleared off. The location of land there for timber or for any other valuable purpose, became active in Jackson County along in the early 80's, 1885 or 1886—he does not just remember when. He cannot remember the exact dates when timber became an object of inquiry by investors, but then it was along in 1888 and 1889, along in there, and from that up to '92 and '93. Hopkins bought in there along about 1890 — there was lots of timber changed hands in that country before 1900. He has cruised for these timber people and did cruising for in-

dividuals before they finally located on a quarter. If they came to him and asked him if he would go and look at a certain quarter section for individuals who wanted to locate on a piece of land, or if he knows of a quarter section of land that would be suitable for a timber claim or homestead, why, as a rule, they never made much difference, they took it either way they wanted it. He located a considerable number of timber quarters.

Q. Well, now, what is the practice—do you charge —a man comes into your office and says: "I want a good timber quarter somewhere in Jackson County," and you tell him that you could locate him, do you keep a set of plat books or blue prints or memoranda from which you can pick out a good quarter?

A. I do.

Q. And then do you charge him so much for locating him if he finally takes it?

A. I do.

Q. What is the ruling price? How do you govern that?

A. Well, the first locating I ever did, I got $50 a quarter for it.

Q. What do they pay? What is the current rate now, about?

A. $250.

Q. Now, what do you do when a man says, "Well, I want you to get me a quarter," what is the process? Do you go out with him and cruise it?

A. Go out with him and look it over, and run it out carefully.

Q. And then, do you cruise it by five acres?

A. If he wants it, why, we do.

Q. And then you charge him for the time that you are cruising in addition to the location fee?

A. Certainly. Certainly.

Q. Then, what decides whether he will take it or not—the amount of timber that is on it?

A. The amount of timber that is on it, and the location of it.

Q. How many claims do you think you have located in Jackson County during the last ten years, or the time that you have been cruising?

A. Not many in Jackson County. I have located a great many more in Klamath and Josephine County than I ever did in Jackson County.

Q. Well, have you located several hundred in these counties, do you think?

A. Oh, perhaps 250.

Whereupon witness testified, that he had located these people under the timber and stone act and under the homestead act, both ways. He presumes that in all the locating that he ever did, 75 per cent of them took under the timber and stone act. He has located a number of homesteads that have some timber on them. In looking for a homestead for people that wanted to take

a homestead, he did not ignore the timber. If he found a quarter section that could be located under the homestead, that had good timber on it, it was evidence that the land was—the better the timber was the better the land was. The more timber a man could get on his homestead, the better the land.

Q. And of course the timber was not any drug to it?

A. It was not.

He does not know that he could say what timber is worth per quarter section there now. The best timber in that Jenny Creek country there where this fine timber was, he knows what they can buy it for. There is some timber there that is not on the market, but there is lots of timber on the market through the country there that can be bought for fifty cents and a dollar a thousand. Three million feet on a quarter there makes it a merchantable quarter for timber in that country out there, to make it worth taking. Take the unsold railroad lands that he has been over, and as a whole he does not think they would average a million feet. Twenty-five per cent of them would have as much as two or three million feet on them. The best timber has been picked out, culled out, by these timber buyers. The character of that which is unsold, in its soil is similar to that that has been sold, but the timber won't average as good. Parts of it is in the timbered country. Western Oregon is considered a timber country. Until one gets to the divide there, going from Ashland east, there is no timber

in that country to speak of at all, that is from Ashland on out to the eastern boundary of townships 39 and 40, range 2 east. There are people living on top of those hills in sight of Ashland. Every place that has a place big enough to build a house, most, has a settler on it. That is about ten, twelve or fifteen miles from Ashland, and there is some of this land outside of the range of this yellow field on this map, "Defendants' Exhibit 259." There has been lots of it settled on recently. He does not mean that there are settlers covering all that bald hill country east of Ashland. The most of it is owned, but he says there are settlers living around there wherever they can get a forty, and people are making a living on them. Those hills, most of them will produce anything. The most of the settlers that have gone in there recently have not the opportunity to get a few acres of bottom land, and they are tilling the soil on those hillsides, taking off the brush, setting it out to fruit, within ten to fifteen or sixteen miles of Ashland. Less than four months ago he visited four places up on what they call Tom Spring Mountain, about eighteen miles from Ashland by wagon road, by legal subdivision it is about twelve or fourteen miles. These foothills around the Rogue River Valley are, most of them, barren except they are covered with scrubby growth of chaparral, manzanita, and some pine. In this particular locality, they haven't anything there but oak and service and pine, and one will find poison oak most any place. These people take these lands as homesteads. In the last three, four or five years, as the lands increased in

value in the valleys, of course, it increased the value of the foothill ranches. He does not know that he could place a value on these lands in the Jenny Creek country that he calls timbered lands, that is, what they are worth an acre, there is no market, of course, different prices, on an average of it right through, they would perhaps be worth fifty dollars an acre. There is not much—not any—difference between the railroad land and the even section in the Jenny Creek country. The best timber has been selected and bought up, and the most of it, both on the even and odd sections, would be worth fifty dollars an acre if it was cleared up and put in cultivation. In its present condition, in his judgment, it would be worth twenty dollars an acre. He never applied to purchase any of this railroad land and never located any one who attempted to make an application under this Act of April 10, 1869, to purchase a quarter section out there for two dollars and a half an acre from the company. He knew of that being done. He had forgotten the fact—but he had located a quarter section for a man under this statute. He does not know whether he can tell the name or not, but the land was in section 3 and 9, township 40, range 4 east, it was all timbered. Those particular quarter sections would perhaps run three and a half to four million feet. It was twenty-six or twenty-seven miles from Ashland in the Jenny Creek country, and it was a railroad quarter. The man went onto it but did not build a house on it. He posted a notice on it and made his claim under the Act of April 10, 1869. He did not pay him in full for locating him

on it—he paid him part of it. This man came to witness to locate him on the railroad claims, and he told him that under the present circumstances witness did not think he could get it. He said he wanted a claim anyway, and if witness would locate him he would pay him a hundred and fifty dollars, and witness told him it was his opinion that he would never get the land. He was not to pay the hundred and fifty dollars until he got the land, and he has not got it yet and witness has not got his hundred and fifty dollars. He picked out a pretty good timber quarter, which was what the man wanted. He got about the best there was in there. It would be hard to place a value on that quarter at the present time, with the timber on the ground, it would perhaps be worth four or five thousand dollars, probably more, but the land itself, if the timber was off, would be worth fifty dollars an acre easy enough. The man claimed to him that he wanted it for a bona fide home.

Q. They all want to be actual settlers for about ten minutes, until they get the title. Isn't that about right?

A. I couldn't say as to that. I don't know anything about that.

Q. They are very careful to pick out the best timber they can find? Isn't that the fact?

Q. Isn't that the fact?

A. Well no, not always.

Q. That is the rule, isn't it, as far as you have had

any experience?

A. Well, in some cases, of course, they look forward to the value of the timber, and in others they want something that can be cultivated. They would much rather there would not be any timber on it.

Q. 40 or 50 years from now, why, they think in their mind that this timber will be removed, and then they will have some land? Is that the idea?

A. I couldn't say what their idea is.

Whereupon witness testified, that he thinks this man had a family and lives in Ashland now, but he could not tell what his business is.

Whereupon, upon redirect examination, witness testified, that there were five of these people who came to him and told him about the prospects of the railroad land being put back on the market and they wanted a claim, wanted him to go and select a claim, that is, help them select a claim. He gave them his opinion of it, and they said they were willing to take their chances, they knew they could get it, and the location where they wanted, in his opinion, had been sold to this man Hopkins, and he told them that. They said that that did not make any difference—Hopkins would lose it. At first they didn't want to pay anything, until they got their location on the land, that is, until they got their aplication allowed. He told them he could not put in his time for nothing, and they finally agreed to pay him fifty dollars apiece to go and show them the land, and then pay the other hundred dollars when they got their application

allowed. They went on the land and started to build a house, put a foundation on it, put up a notice. He showed them several sections, and they made the selections themselves, then they made an application for the land, he was told—he don't know that to be a fact, but they were refused. This man from Ashland that he spoke about paid him fifty dollars, he didn't get the hundred and fitfy dollars, but only got a partial payment. He merely showed them the lands that they wanted to see, he showed them several sections in that part of the country and they made their own selections. They thought those were the better. They looked at the agricultural part of it. They could have gotten other claims there, perhaps located just as well as these, only the soil was not so good. There was more rock available than there was on those particular sections. They solicited his services but he did not solicit anyone to make a filing, and advised them against it. Most of the people he has testified to having located timber and stone claims for in that country, are people of moderate means, some of them practically had nothing—say three or four hundred dollars. They lived principally in different parts of the United States, most of them lived around Portland, Oregon, and most of the people who bought timber and stone claims were city people, merely speculating in timber. Most of the people were from the city of Portland, some were from Seattle. The Hopkins people were from Lock Haven, Pennsylvania. The old gentleman is dead, his sons still retain the title to the timber lands. They own all the best of the timber lands in this country, the

Hopkins estate and the Oshkosh Land and Timber Company own the best of the pine through that section of the country. Speaking of the land being cultivated on the mountains and hill sides, old man Tyler has been there for the last forty years, and he has nothing only a hillside ranch. It is rolling, in his opinion if it had had timber all over it he would have had better soil and would have been growing more crops than he is at the present time. These last persons that he spoke of are new people in the country, up on the side of the mountain, they are located on the side of the mountain. It is not steep like some of these coast mountains are, but they all have nice gardens and some grain there. Their grain was cut when he was there, they had it in stacks and in the barns—some of them did not have any barns. Tyler's place is about thirteen miles from Ashland by road. On above Tyler's place, still further up on the side of the mountain, where they have no bottom land at all, there is D. N. Davis and his two sons, they both have homesteads there, in section 8, township 40 south, range 3 east. The old gentleman has been there for a number of years. He is cutting down the timber, burning it up, clearing the land there on the side of the mountain, making a living for a good big family. His two sons have taken homesteads there. One son has eighty acres in his homestead, that is in the timbered country. The first lands that were taken in this country where he has lived since his birth, were the most level valley land that they could find; then as the land increased in value and the population increased, they moved out until they are up on the

mountains, and all through the mountains at the present time. Most of these lands have been acquired by homesteads. He does not know but few people who got them any other way. He thinks he could mention one or two cases where they bought railroad lands, Kincaid, he thinks, bought some railroad land in what he thinks they call Hyatt Prairie country. The Barrons, he thinks, bought a little there, in Township 39-3 South, on the headwaters of Keene Creek. Practically all the lands the railroad company has sold in Jackson county were the sales made to these large companies. All the titles have been acquired from the railroad company, so far as he knows, only by what they call capitalist companies, people that wanted it for speculation. He does not know whether the railroad company has parted with the title to this land that his father wanted to buy, adjoining his farm there in township 40 south, range 2 east, and he does not know whether the company still owns that land.

Q. What is your opinion, Mr. Bailey, as to the effect, the difference in effect between holding these lands as the Railroad Company have the present holdings, and the condition that would have existed had the lands been open to settlement under the conditions of the grant at $2.50 an acre in 160-acre tracts? I mean, holding it there with this timber on it that exists there, or making farms of it—the difference between those two effects upon Jackson County especially?

A. In my best opinion, there would be a good per cent of it occupied at this time by bona fide settlers.

Q. What do you mean by settlers?

A. I personally know of at least one hundred homes that would be built in the country, that are not here now, if people could have acquired title to railroad lands.

Q. What would those people—what business would they engage in?

A. In general ranching.

Q. Ranching is a term that here in the west we apply to farming?

A. Yes, sir, farming. A farm, the way I look at it, is a large place that you raise grain on. A ranch is a general ranch, a little stock and fruit and vegetables and hay.

RECROSS EXAMINATION.

Q. You mean a stock place?

A. Yes, sir.

Q. Well now, suppose the Railroad Company had sold these lands, these timber-lands, at $2.50 an acre, in quantities of not to exceed 160 acres, within the last five or six years, and given them a good title, how many of them do you suppose would have sold their lands to these timber people at an advance of about $20 or $30 an acre?

A. I don't think any of them would, because I don't think they could have gotten it.

Q. Well, don't you think the most of them that

paid $2.50 an acre, if they had got $20 they would have sold out, wouldn't they?

A. In some instances they might have. But then, I know of lots of good people that would have been living on those lands today, improving them, and would have taken them from an agricultural standpoint fully.

Q. I understand that is what you are here to testify to, about the agricultural end of it. I am asking you this question, Mr. Bailey: Suppose the Hopkins land had been sold to these so-called actual settlers, at $2.50 an acre within the last 10 or 15 years, they could have turned around, couldn't they, and sold these Hopkins lands for from $30 to $50 an acre, couldn't they?

A. I have been told that they could have been sold for $40 an acre.

Q. Don't you know they could have sold them for at least $30 an acre any day almost?

A. There has been times when it could have been sold for that, I am satisfied of it, yes.

Q. Well, now, then, these actual settlers, buying at $2.50 an acre that character of lands, when they got the deed, next day they could have sold it for $30, couldn't they, per acre?

A. Well, perhaps they could, yes.

Q. Well, now, do you mean to tell me that they would not have passed the title to these lands to the timber investor or speculator, under those circumstances?

A. Not in all cases.

Q. Not all cases, but in the most of cases they would, wouldn't they?

A. Well, now, that is pretty hard for me to say what people would do.

Q. Well, don't you know that that would be the case, the natural thing to do ?

A. Well, I don't know that it would, no, I don't.

Q. Do you want the Court to get the impression that you think they would not do that, when they could make $27.50 an acre by just paying $2.50 and getting the deed, and getting it right back again?

A. Well, what—

Q. Just answer my question.

A. I don't know that I clearly understand the question yet.

Q. That is your answer, is it?

A. Well, I am not prepared to say what people would do in those instances, but I can only speak from personal acquaintance with people that I do know. If they owned some of those best timbered lands, they would not part with the lands for no $40 an acre.

Q. They would want probably $100 as an investment?

A. They would consider the value of the land much more than the timber that is on it.

Q. Well, they would not consider the timber, then, of any value?

A. They certainly would.

Q. And yet they could sell their claims for five to six or seven thousand dollars a quarter?

A. Some of them, yes.

Q. What did these people who proved up under the Timber and Stone Act, what did they do, most of them, with their quarters? Hold them and sell them to timber people?

A. Most of them sold them. Some of them still hold their claims.

Q. That is, they got them for $2.50 an acre, and sold them for as high as $25 or $30 after holding them a year or two?

A. Well, I will say all the way from $5.00 to $25 and $30.

Q. From $5.00 to $25.00 an acre?

A. Yes, sir.

Q. And that they would do in two or three years after they have made final proof, paid their $2.50 and got their patent?

A. Yes, sir.

Q. Never went on the land, and never struck a tree or cleared an acre on it?

A. They all went on the land, all that I ever knew anything about.

Q. They went on the land and looked at it, under

the requirement, as they thought, of the Land Department, which required them to swear they had seen the land?

A. Yes, sir.

Q. Some of them would go and look at it half a mile away?

A. I never located anybody in my life that looked at it that far away.

Q. There was a requirement of the Land Department that they had to swear in making their application they had seen the land?

A. They had to testify that they had personally examined each and every legal subdivision.

Q. Yes, and that it was chiefly valuable for timber?

A. It was chiefly valuable for timber.

Q. And was not agricultural?

A. It was not agricultural.

Q. And you have located a great many, and they have been able to sell at from $5.00 to $25.00 an acre?

A. When they have sold, yes.

Whereupon, upon redirect examination, witness testified, that under the requirements of the Timber and Stone Act, the affidavit required that they should make oath only that the land was chiefly valuable in its present condition for the timber or stone that was on it. There should be a distinction between the speculator, as one

may term the Timber and Stone Act man, which requires no residence on the land, and the settler. His way of looking at it is, that if the land was all sold to Hopkins, it would never benefit anybody but that man Hopkins, while if it was sold in one hundred sixty acre tracts, it would benefit each applicant on that tract, even if they did sell it for the timber that was on it.

Q. If they would sell, however, to an actual settler, a man who would actually settle on the land, for what purpose would he use it? For what purpose have those men who have made bona fide settlements, used the land that they have settled on in this community that you are acquainted with?

Q. Do you understand the question, Mr. Bailey?

A. I don't know that I do.

A. Well, if they would sell it, they would use the money they would get for it, generally speaking, to put themselves some place in a comfortable home, but the most—well, say 50 per cent of it, would be inhabited.

Q. Now, there are men, are there not, Mr. Bailey, who have taken up lands, even under the Homestead Act, merely for the purpose of speculating in the lands, not for the purpose of making it a home, as you would judge from their actions after making proof?

A. Well, in my opinion there has been.

Q. Now, isn't there a distinction between those men and the man who has taken up the land with the intention of making his home on it, farming it?

A. There is.

Q. Then, if these lands were sold in 160-acre tracts, to actual settlers, the lands would be disposed of practically as the Government lands have under the Homestead laws?

A. Along the same lines; couldn't be otherwise—couldn't.

Q. And fraud could be guarded against in the same manner that the Government guards against fraud?

A. Certainly it could be.

Whereupon witness testified, that he has spoken of this Jenny Creek timber, but there is no other timber in that area that compares with that as to value or stand. It is said to be, by all large holders of timber lands, the finest body of sugar pine in the United States, and it is not a fair comparison as to the area with which he is acquainted as to the timber value.

Whereupon GRANT TAYLOR, called as a witness on behalf of complainant, being duly sworn, testified, that he lives at Winchester, Douglas County, Oregon, and has lived in that county about fourteen years, eight years of which he lived in Winchester. He had a farm there above Winchester about a mile east on the North Umpqua, consisting of four hundred and seventy-nine acres. He sold that and does not own it now. He farmed about seventy-five acres of it, raised potatoes, corn, grain, and hay, and did general farming and had stock on the place. The land that he farmed was along

the river, but the pasture land was rolling. He has cruised timber some. He followed locating and looking over land for companies about eight years and has cruised some land for people and made reports as to the land, and as to some of these lands in these reports he reported on the farming possibilities, soil, and matters of that kind, and in some of them he merely gave the estimates of the timber. He is acquainted with the possibilities of farming the part of Douglas County over which he has been, and he is so acquainted from his actual experience as a farmer and his observation of the farms he has seen. Before going to Douglas County, he lived three years at Salem, Oregon, and in Oregon altogether about seventeen years. Referring to "Defendants' Exhibit 259," he is familiar with township 22, ranges 1, 2, 3, 4 and 5 west, inclusive, and as far south as township 26, ranges 1, 2, 3, 4, and 5 west. He obtained his knowledge of these lands in looking over the timber and locating. In locating people and cruising the timber, he would run the lines ordinarily of a section or subdivision of the land that he was looking at. If the timber was removed from those lands, marked in green on Defendant's Exhibit 259, in that area with which he is acquainted, he would say that 50 per cent of it could be rendered suitable for cultivation,—by cultivation, meaning tillage of the soil,—basing his opinion upon his knowledge of farming as carried on in the communities in the vicinity of the land. This average would apply to all these lands with which he is acquainted. Some places, a man could farm a hundred and sixty acres, and other places he

could not get more than ten or twenty acres on a hundred and sixty acres,—that would vary as to the various tracts, the character of the land, the character of the country.

Q. Mr. Taylor, in your opinion, would these lands if divided into 160-acre tracts be suitable for actual settlement, for a man to go on there and engage in farming, for the purpose of making it his business, and for the purpose, of course, of supporting his family, as an ordinary homesteader would do?

A. Oh, probably one-third of the land could be cultivated and made homes of.

Whereupon, upon cross examination, witness testified, that he is forty-nine years old. His place is about a mile east of Winchester and Winchester is about five miles and a half from Roseburg. The North Umpqua is quite a considerable stream at Winchester. It rises up near Crater Lake and empties at Winchester Bay into the Pacific Ocean. He has been a timber cruiser and timber locator for about eight years, and he has perhaps located a hundred and fifty timber claims in that time. He was working for himself when he first started locating parties from the eastern states. When he started out, he charged these people about fifty dollars a claim, but finally got up to two hundred dollars after claims got scarce. As a timber locator for these people, he would take them out, show them the land, show them the lines, take them around the lines. He kept a list of what he thought was the best available quarters of tim-

ber. He had maps of them and has them yet. He located quite a number of people under the Timber and Stone Act and a few under the Homestead Act. Quite a number of these people were from Portland, some from the state of Washington and some from the eastern states. Locating began actively about seven years ago, and timber first began to be considered an object of value about ten years ago. These people that he located, finally got title to the lands, some of them sold, and some have them yet, and some of them held the land for investment. They were timber lands. A good timber quarter runs from three million to ten million feet, some of them, some better. A ten million quarter section on the Umpqua that could be logged is worthy about fifty cents a thousand for stumpage. In buying these lands, they usually bought a hundred and sixty acres, and took the title to the land.

"Q. Now when you say that probably one-third of these lands could be made farming lands, you mean after the timber is cleared off?

A. Yes.

Q. And the stumps are grubbed up and made so it could be plowed?

A. Yes."

He never applied to purchase any of this railroad land and he never located any of these people on any railroad lands. These locations were all in Douglas county that he made and were made in the timber belt.

Whereupon, upon redirect examination, witness testified, that he spoke of one-third of these one hundrd and sixty acre tracts, he thought, as being suitable for the purposes mentioned, and a man could settle on hundred and sixty acre tracts of these lands with only ten or twelve acres of plow land, and make a living on them for himself and his family. That would depend somewhat on the man that located there. When he estimated one-third, he estimated that that would, in his opinion, make the living that he is accustomed to.

Whereupon, upon recross examination, witness testified, that these men that would go on there without any means at all, would have to work outside for a while to get something to make their little improvements and help them clear up the land.

Whereupon G. E. KELLER, called as a witness on behalf of complainant, being duly sworn, testified, that he is thirty-eight years old, lives three miles south of Dillard, in Douglas County, Oregon, and has lived in Oregon since 1885. His occupation, since he has grown to man's estate, has been mostly farming and laboring in Oregon. His step-father was a farmer. Witness farms about twenty-five acres at the present time. His farm is located in section 7, township 29 south, range 6 west, and he raises principally garden, hay, stock, but not grain to thresh. He raises grain to feed. He uses wheat and oats for hay, and vetch. He is acquainted with the farming business in that locality. Referring to "Defendants' Exhibit 259," Dillard is situated

in township 29 south, range 6 west. He is practically acquainted with that whole scope of country there, township 29, ranges 6 and 7, township 30-6 and 7, and east half of this particularly, the east half of townships 29 and 30-7, and he is acquainted with these up above Dillard (pointing to yellow field just above Dillard). Those townships contain a substantial amount of unsold railroad land. There are settlers living in these townships on government land, adjacent or near unsold lands of the railroad company, as indicated by the green markings, and they are engaged in farming and agriculture. That locality is pretty thickly settled, and the lands they are using are of the same general character principally as the railroad sections. He would say that 66 2-3 per cent of these railroad lands could be rendered suitable for cultivation after removing the timber or brush, and by cultivation meaning tillage of the soil, removing such of the timber or brush as would be necessary to put them in a state of cultivation.

Q. Now, if those lands should be taken by actual settlers in quantities of 160 acres, by contiguous 40-acre tracts, what is your opinion as to the number that would be, the percentage that would be suitable for settlement, and would furnish support to a settler such as a homesteader?

A. I think 50 or 75 per cent in different sections.

Whereupon witness testified, that these settlers or farmers raised in this vicinity, grain, all kinds of small grain, corn, all kinds of berries, fruits, tomatoes and mel-

ons—all kinds of farm products. There are farms there, all the way from two-acre farms up to two thousand acres. There are not so many of these thousand-acre farms now as there were. Most of these big farms have been subdivided. The average acreage of these farmers who own and farm and use the land for farming purposes in the vicinity of these railroad lands, is from two acres to four hundred acres, and he supposed about an average farm, take the country through, would be about thirty or thirty-five acres. Most of these people live on the land and follow the pursuit of farming.

Q. In your opinion, Mr. Keller, what has been the effect of the failure of the Railroad Company to fulfill the conditions of this grant, in failing to sell to actual settlers at $2.50 an acre, in tracts of 160 acres, and in withdrawing the land from the market?

A. I should say it had retarded settlement to a certain extent, quite an extent.

Whereupon, upon cross examination, witness testified, that he had taken a homestead of forty acres in section 7, township 29 south, range 6 west, in 1896, lived on it three years and commuted it. He paid two dollars and a half an acre for it. It was in a railroad section. He did not live there at the time the railroad grant was made, but he had heard that there was a man who was squatting on there, his settlement was initiated before the grant took effect, and this man afterwards abandoned it and it became public land. It was not railroad land at the time witness filed on it. Witness cleared

about six acres of this forty-acre tract, and the man who preceded him had not cleared any. The balance of the forty acres had very little timber, but was pasture and brush. This forty is southwest of Dillard, three miles by the road survey, and witness lives on this land and makes his home there. He does not own any other land besides this forty but he farms other land, having a lease of a hundred and sixty acres adjoining. It is not all open land; there are about ten or twelve acres on this 160 acres that is plowed, and a lot more that is slashed, and a lot more of it is open land that he does not farm but uses for grazing purposes. He does not run a stock farm to any great extent, but raises a few cattle, milk cows, chickens, garden stuff for sale, and sells his garden stuff at Dillard or Roseburg. He sells a few potatoes, just a few strawberries, a few chickens occasionally, and eggs and butter and cattle. The number of cattle that he sells varies with different years, he sells from one to five head. He raises hogs for his own meat, but does not sell any. The land around in that vicinity is not all fenced, there is a good deal of land out to the common. This land, other than the railroad land that is not fenced, belongs to different settlers. They have not fenced all their land. They have fenced a little piece where their buildings are, where the land is cleared, and the balance is left open. These settlers do just about the same as he does principally. Their stock can go on the common, any place they want to, and if a man wants to keep stock off his land, he must fence against it, that is the general rule in farming country, especially in timbered country.

He pastures the railroad land and doesn't pay anything for it, and pastures the government land just the same. The railroad pays the taxes, if anybody pays it, on these lands, and the farmers adjacent get the benefit of any pasturage. He does not cut any wood on any railroad land, and people do not make a practice of cutting wood on railroad lands. He never applied to purchase any railroad land directly from the company and never made any application to the company on one of these blanks, by which parties apply to the company to purchase one hundred and sixty acres at two dollars and a half an acre.

Q. You have heard about Mr. Leavengood out there at Roseburg, working up 3000 or 4000 people in Douglas county on lands, didn't you?

A. I have heard of it.

He has never done any of that and he is not one of Leavengood's applicants and never located any homesteads other than his own. Dillard is an old settled part of Douglas county, old man Dillard was an old pioneer who came there in the '50s and took a donation claim where Dillard is. The railroad went through it and bought its right of way through his place. A good deal of that land around Dillard was taken under the Donation law. It is sort of little valleys and foothills around there. Most of the railroad land that is left, with which he is acquainted, is back in the foothills generally. Not all of the best agricultural railroad land that was there, has been bought a long time ago by farmers, but that

which was the easiest to get at, closest down to Dillard and in that vicinity, was bought by people, farmers and others, a good while ago. The unsold railroad land in that section that he speaks of, south of Dillard and southwest of Dillard, is on Looking-Glass Creek, about ten or twelve miles from Dillard, from this yellow land shown on "Defendants' Exhibit 259." That is all open country up as far as Ten Mile, and south of Ten Mile at Olalla is open country. As one goes further up the Looking-glass, the valley narrows along the Looking-glass, and there are some Donation Land Claims on the Looking-glass away south of Olalla, and that was settled away back in the '50s. The railroad quarters that are left in there are covered more or less with timber and brush and hills and some rock. Some of the hills are tolerably high and tolerably steep.

Whereupon, upon redirect examination, witness testified, that this six-mile limit as shown on Defendants' Exhibit 259 of the Roseburg and Coos Bay Military Wagon Road comes nearly down to the limits, down very near the town of Dillard—it comes to Dillard. That land, according to this map, was lost to the grant by reason of the grant to the Roseburg and Coos Bay Military Wagon Road. He knows that as a matter of history. He knows that in south of Dillard there, this wagon-road grant is from Dillard north, as shown on the map, south of Dillard one will observe the green markings on the map within a mile of Dillard there to the south. The green markings on Defendants' Exhibit 259 show that the railroad hold-

ings are practically intact.

Q. A very few of the blue markings appearing in these townships. Now, in 29-6, according to the Bill of Complaint, Mr. Keller, the Railroad Company still holds 120 acres in Section 1, 223 acres in Section 3, all of Section 5, 416 acres in Section 7, 446 acres in Section 9, 195 acres in Section 11, 600 acres in Section 13, 345 acres in Section 15, 309 acres in Section 17, 292 acres in Section 19, 492 acres in Section 21, 520 acres in Section 23, 400 acres in Section 25, 560 acres in Section 27, 160 acres in Section 29, 320 acres in Section 23, and 240 acres in Section 35. In Township 30 South, Range 6 West the Railroad Company still holds 464 acres in Section 1, 470 acres in Section 3, 476 acres in Section 5, 622 acres in Section 7, 480 acres in Section 9, 400 acres in Section 11, 120 acres in Section 15, 495 acres in Section 19, 440 acres in Section 21, 40 acres in Section 23, 111 acres in Section 25, 320 acres in Section 29, 131 acres in Section 31, 40 acres in Section 35. In Township 29 South, Range 7 West, the Railroad Company still holds all of Section 1, Section 11, Section 13, Section 15, Section 31 and Section 33, and 229 acres in Section 3, 162 acres in Section 5, 458 acres in Section 9, 200 acres in Section 17, 617 acres in Section 19, 280 acres in Section 21, 598 acres in Section 27, 240 acres in Section 29. And in 30 South, Range 7 West the Railroad Company still holds all of Sections 3, 9, 15, 17, 19, 21, 25, 29 and 31 and 420 acres in Section 1, 339 acres in Section 5, 521 acres in Section 7, 440 acres in Section 11, 480 acres in Section 13, 520 acres in Section 27, 440

acres in Section 33, and 600 acres in Section 35.

A. I think you made a mistake.

Q. Now, from the green markings on the map, Mr. Keller, isn't it a fact that these descriptions I have read here include practically all of the railroad lands that they obtained under the original grant as shown by the markings on the map?

A. Yes, sir.

Q. What is the character of the soil in these lands, Mr. Keller?

A. What is the character of the soil?

Q. Yes, the general character of the soil.

A. In which way?

Q. Is it a clay black loam, or what?

A. Oh, its composition! Well, it varies.

Q. Please state the kind of soil.

A. Some of it is sandy. Some of it is dark loam. Part of it is clay.

Q. Is it a productive soil, or are these soils productive?

A. They are.

Q. What do they raise on them?

A. Well, the people that live on them, they raise most anything they want to grow—fruit, berries, grains and gardens.

Whereupon, upon recross examination, witness tes-

tified that some of these railroad lands were pretty rocky in that twelve miles square, and to a certain extent were tolerably steep. The country south and west of Dillard, going over the ridge to Looking-glass, south of Olalla, is pretty rough in there; that is, in that other township, though.

Q. Well, practically more than half of these railroad lands are rough and sort of mountainous?

A. Well, they ain't all level, sure.

Q. How?

A. They ain't all level.

Q. No, they are not level like this floor here?

A. No, not by a long way.

Q. Pretty steep and rocky in places?

A. Yes, in places they are."

In some places there are south hillsides that are practically without any soil, but have a little grass in the spring, that burns out by the first of June. The north hillsides that have oak grubs on them, or shrubery of that kind, have a better soil. As a general thing, the better the timber, the better the soil, the more there is on it. Some of these lands have saw timber on them. Dillard is a very small place, with a postoffice, station and two warehouses, and has a store, hotel, and several dwellings around there. There is no sawmill there now and no manufacturing. There is a prune dryer there. At Dillard and around there, there are some pretty good

prune orchards in the valley.

Whereupon, upon redirect examination, witness testified that it is generally an agricultural country around Dillard there.

Whereupon JOHN NEUNER, called as a witness on behalf of complainant, being duly sworn, testified that he is thirty-one years of age, resides at Glendale, Douglas County, Oregon, and has lived in Douglas County, Oregon, about eighteen years, practically ever since he came to Oregon. He was a farmer, engaged in grain farming—general farming—for about fourteen years on the Umpqua River at a place called Day's Creek, situated in the Umpqua valley on the South Umpqua, in sections 2 and 9, in township 30 south, range 4 west. They raised all kinds of small grains, small fruits, and all kinds of stock that are generally raised in that particular country. They farmed mostly on bench lands there in Day's Creek. Bench land is land that is lying on a higher raise than that of the lower lands. The lower land through there is called bottom land, and then farther back on the next raise is the bench land. They also farmed some of the hill land. It is quite high up on the slopes. The bench lands are not as a rule necessarily level; they are also siding and sloping, some slope quite abruptly. Quite a per cent of this land was timbered when they went there. They cleared up a good portion of it, perhaps, on the entire tract, about one hundred acres. They farmed about six hundred acres there—quite an extensive farm

for that country. He was farming with his father, George Neuner. Referring to "Defendants' Exhibit 259," he is more particularly acquainted with the land in townships 29 and 30 south, ranges 3 to 7 west, and that portion lying south for two townships on ranges 3 to 7 west, inclusive. That would include townships 30, 31 and 32 south, ranges 3, 4, 5, 6 and 7 west, in southern Douglas County. He has been over about every quarter of that country. He is thoroughly familiar with it, has been over it for the last six years, more or less all the time. He has cruised a good deal of that land in there and has had also a little real estate experience in through there. He is in the livery business, too. He has been over that land a good deal, with timber owners, and also with farmers, etc., small farmers and stock raisers. In his opinion, eliminating the yellow lands which were never owned by the railroad company, and the blue lands which have been sold by the company, 75 to 80 per cent of that land, especially the railroad sections marked in green in township 30 south and the ranges mentioned by him, could be used for agriculture in the broadest terms, meaning by broadest terms, stock raising and the general pursuits of agriculture. That is, after the timber is off, 30 to 40 per cent of it could be made suitable for cultivation. About 70 per cent of township 31 south, ranges 3 to 7 west, of railroad land would be fit for agriculture, and about 25 to 30 per cent for cultivation. About 80 per cent of township 32 south, ranges 3 to 7 west, would be fit for settlement, and about 30 to 35 per cent of it tillable. There are settlers

or farmers residing on lands adjacent or contiguous to the railroad lands and of the same general character, and that applies to all three townships that he has mentioned. In his opinion, 75 per cent of that land in township 30 south, ranges 3 to 7 west, if it were divided into legal subdivisions of one hundred and sixty acres each, would support families, and about 70 per cent of township 31 south, ranges 3 to 7 west, would be suitable for that purpose and could be utilized by a farmer to earn his support. It is a little rougher, the hills are a little higher. About 75 per cent of township 32 south, ranges 3 to 7 west, could be so utilized, meaning in each case that if a man would go on a hundred and sixty acres of it as a homesteader, it would be suitable for settlement purposes. There are people living on one hundred and sixty acres of land in that vicinity, making a living there and earning a support.

Q. How long have settlers been in this area of this country? I am eliminating now the lands that were lost to the company by reason of prior entries and land grants, as noted on the yellow field in the map.

A. Well, that country has been a good deal of it, a good portion of it, has been settled ever since I came to the country.

Q. Mr. Neuner, in your opinion, what has been the effect of the Oregon and California Railroad Company's failure to fulfill the conditions of the grant, and sell to actual settlers in 160 acre tracts?

Q. I will add, in this area that you are acquainted

with?

A. Why, to the best of my knowledge, and which I think I have a thorough knowledge of, it has greatly retarded the development of that country, in the way of keeping people out that were looking for homes. A great many people were looking for, have been for the last six or seven years, to my knowledge, have been looking for homesteads, and they cannot be secured, because the Government land that was there was taken up during the timber rush by outside speculators, and consequently that did not leave very much Government land; and that that it did leave was so far apart that it was difficult for people to get in there with families and get schools and roads.

Whereupon witness testified that a good portion of this area contains more or less timber all through it—it is called a timber country. From his knowledge of this general country, as he has observed it, it was, in its original state, practically all a timbered country to a more or less extent, and the lands back on the benches and slopes required clearing generally in that country before they could be cultivated. But the creek and river bottoms were, to his knowledge, cleared. The area covered by the creek bottoms, as compared with the lands now in cultivation in that country, is small. The country was developed by the people going in and settling on these lands in that community, clearing them up, and following it with general farming and stock raising. The first settlers occupied the bottom lands, and that was the

easiest to clear. That would naturally follow in any country. Settlement has not progressed very much as time has gone on. As he stated once before, the timber—pretty much of it—pretty much of the land was taken up by the timber speculator, and what little there was left was settled to some extent where it was accessible to roads and schools. But there being so much of this railroad land held up made it difficult for them to get schools—ordinary school, church, etc. Farming has extended up farther into the hills and valleys as time has progressed. He knows of lands occupied, adjacent to railroad lands, of the same general character, which have been used for farming purposes, from which farmers earn a support for themselves and families residing on the land.

Whereupon, upon cross examination, witness testified, that he is in the timber business to some extent, and has made timber locations for a few people in Douglas county. He located nearly all people that came in from Spokane, largely Spokane people—a few. These so-called locators were men who were seeking to buy timber quarters under the Timber and Stone Act. This was about six years ago. The first rush for timber was about twelve years ago. People took up timber lands largely through this particular section, a great many Eastern people. They did not take up homesteads so much at that time, they got it through the Timber and Stone Act, and he presumes they also began to buy railroad land about that time, twelve years ago, in the timbered area. Some of the timber people that bought

some twelve years ago and since in Douglas County, to his knowledge, are the Myrtle Creek Lumber Company, which bought quite a large area of land up there, and W. P. Johnson. There are a large number of timber holdings in that county, large timber holdings.

Q. These timber lands that were taken under the Timber and Stone Act, and a few under the Homestead Act that you know about, were they good timber lands as a rule they got, about as good as they could get?

A. Yes, about as good, naturally.

Q. About how many million feet to a quarter section is considered a good timber quarter, good average timber quarter?

A. About 3,000,000, an average.

Q. Have you any judgment as to what these unsold railroad lands would average in the timber holdings, taking now the timber-lands, and excluding the bald hills and the foothills where there is no fir timber.

A. Excluding the bald hills?

Q. Excluding the bald hills, and excluding the bare hills and the hills covered with brush and with oak grubs—small brush as you have there in that country, and including the pine and fir and cedar and hemlock and spruce, and such timber as is commonly called saw timber, about what would be the average, in your judgment, of these timber-lands per quarter section?

A. About 3,000,000 feet.

Q. Now, what is the best stand of timber that you,

as a cruiser and a real estate man, and as a citizen of Douglas County, familiar with these matters, know of in Douglas County? About the largest stand per quarter section.

A. In that area that I spoke of, about 6,000,000 feet would be considered the best—among the best.

Whereupon witness testified that the highest price of such a quarter section, within his knowledge and observation, would be about three thousand dollars. He would figure that the stumpage would be about fifty cents. Land has sold at a higher stumpage in some of the more favored quarters, and as high as a dollar in some parts, depending upon accessibility to logging streams or convenience to transportation of some kind. If a man could get a dollar, or if they sold it at the rate of a dollar a thousand, and it carried six million feet, that would be six thousand dollars for a quarter. Most of his locating people on these timber claims was done by other people, he merely got the cruise, looked over the land for them, and the timber for them, and they usually brought them in, and these other people would give him about half of what they would charge: that is, a timber locator would come to him and say, "I have a customer now, and I want you to cruise the land, and I will divide with you the charge, whatever we get." They did not get as high as two hundred and fifty dollars a quarter, about two hundred dollars was about as high as they got.

Q. Did you ever locate any of these so-called actual

settlers that Leavengood and others found out there in Douglas county and brought some of them from the east?

A. No.

Whereupon witness testified that he located no one who used blank forms and made tenders to the Company for railroad land. He had nothing to do with and knows nothing about that. He heard that these people charged fifty dollars, but has no personal knowledge of that.

Q. Did you ever see any of these notices on these railroad quarters, where these actual settlers had posted notices that they claimed it under this Act?

A. I think I have noticed some of the notices, yes, sir.

Q. Did you ever see any cabins where they have built shake cabins, and put a little bedding in, and a stove?

A. No. No, not that I know of.

Whereupon witness testified that there were not very many in Douglas County, within his knowledge. That began about five years ago, after withdrawal of the lands in 1907, 1908, about the time that the Legislature adopted a memorial in 1907, asking Congress to forfeit this grant.

Q. Then the whole country began to look for these timber lands, didn't they?

A. Yes, there were quite a good many through

there, to my knowledge, a good many people moved up on this railroad land.

Q. Yes, they all thought they were going to get the land right away.

A. Well, not so many. A good many wanted to get the more favorable places to make homes of it.

Q. Well, some times there were four or five tried to get the same quarter section?

A. Well, not to my knowledge.

Q. Well, those people that moved in have moved out again, haven't they?

A. Yes, they have moved out now. Well, not all of them. I know of some that are still there yet, cultivating the soil.

Q. Farming some of the railroad lands?

A. Yes.

Whereupon witness testified, that to his knowledge there are two men with families farming this railroad land. They are at Day's Creek, and have built houses there—improvements, house, barn, outbuildings. One of them is in section 35, township 29 south, range 3 west, and his name is C. N. Wood, and he has cleared about twenty-five acres and the balance is brush and timber, and has a little saw timber on it. The other man is Jesse Tiller, who has about thirty acres cleared, the balance of the land that he claims is oak timber, this oak timber is not very valuable down there. It is not saw timber, it is not just oak grubs, and has no commercial

value excepting for wood. There is not much saw timber on this quarter. These men did not offer two dollars and a half an acre to the Company and then go and settle on the land. They wanted to buy it, to his knowledge—at least they told him so. They offered to buy it of Eberlein of San Francisco. One of them has been there for about six or seven years, has a pretty good house, barn, outbuildings, fences. Witness does not know whether the man is taking chances as to whether he can get title or not, and does not think the man has any contract with the railroad company—does not know whether he has or not. The nearest postoffice to them is Day's Creek, which is just a postoffice. A good deal of this land he is speaking of now that he has been over there, is on Day's Creek, which flows into the Umpqua river at a point eight miles east of Canyonville; the other lands that he was talking about. Cow Creek runs up through there, and the railroad runs along Cow Creek from Riddle to Glendale. The country is very rough right through where the railroad runs—very rough. The railroad lands there in sight of the track from the train have not been logged very much, it is not good timber, it is rather poor quality right along the track there. Those hills on either side, the land is not very good—not along the track, and this condition extends either way from the railroad a quarter of a mile, and when one gets away that distance there is pretty good land—plateaus and timber, land and timber—fir, pine and cedar. There is some little mining in that section, largely placer. Cow Creek Canyon is one of the

worst and most rugged mountain canyons in western Oregon, to his knowledge. The land that his father is on is a Donation claim. It is the Donation claim, he thinks, of John Day, who settled along in the fifties, and was one of the oldest places in Douglas county. Of the six hundred acres of that land that they had when they went there, there was about five hundred acres clear, and that is pretty good farming land yet. They raised grain and stock—they hauled out a great deal of the grain to the railroad. They are not there now. He doesn't know in regard to shipping conditions of grain now, and does not know that they are shipping flour from the Willamette Valley and eastern Oregon into southern Oregon today to feed the people. They used to raise a good deal of grain in the Umpqua Valley, and those warehouses at Dillard and Riddles all carried considerable grain in the early eighties. They raise a good deal of grain yet in Cow Creek and Umpqua Valleys and ship out a good deal. Some of it is milled in the county, and some of it is shipped out yet, to his knowledge. He does not know whether it is shipped out of the County, but it is shipped to various parts of the County, it might be to some mill in the County. He does not think, generally, that there is as much grain raised in Douglas County as there was twenty years ago.

Whereupon, upon redirect examination, witness testified, that they are devoting their lands that were formerly in grain, a great deal of them, to diversified farming in Douglas county, and there has been a good deal of subdivision in that section. There is a tract at Suth-

erland that was quite a large farm at one time, north of Roseburg, that has been subdivided and sold. In making his estimates on the amount of this land that is agricultural land, that could be tilled and which is suitable for settlement, he has taken into consideration the rough lands mentioned in his cross examination. Six million feet of timber on a quarter section is a very large stand of timber for that area. It is the best through there. This timber is not one big dense forest.

Q. Please describe, in your own language, the way the timber lays there.

A. It is considered a timber country, because there is oak grubs and oak through there; but nearly all the southern slopes, or a great portion of the southern slopes are covered with this oak grub, and also open draws, especially in the draws a good deal of this land is open, and the northern slopes are more or less covered with heavy growth of timber, fairly heavy; and also some of the western slopes, a good many of the western slopes are burns—areas that have been burned over. The wind has some time or other come in there and blown down a great many of the trees, and then fire caught them.

Whereupon witness testified, that these burns and draws and other open places he has mentioned are lands that would be suitable for cultivation—farming and ranching there, they clear up the land largely by stock, and it does not take so much of that land there to support a family. Twenty acres of that land there would support a family, and they can devote the rest to graz-

ing. These people who came in from Washington and filed on Timber and Stone claims were not people looking for agricultural lands to settle on. They were speculators purely and were looking solely for timber. In some instances, these people took up lands under the Timber and Stone Act that contained little or no timber. There was a wild rush about that time to obtain timber, people became over-excited over the subject of timber. There is a considerable area in these railroad lands of which he has testified that contains no merchantable timber, that would be suitable for agricultural purposes—that is, for actual tillage of the soil, and he would say that about 30 per cent of it which contains no merchantable timber could be rendered suitable for cultivation.

Q. Now, Mr. Neuner, if the Railroad Company were to open up these lands, and sell them to actual settlers, or if they should come into the hands of actual settlers, men engaged in farming, in your opinion, would that assist the people in Douglas County in raising a sufficient amount of grain to supply the demands of the community?

Do you understand the question, Mr. Neuner?

A. Yes, sir. I would say that it would. But Douglas County, if I may state that?

Q. Certainly.

A. Douglas County, especially southern Douglas, is given up to diversified farming. There is a great deal of dairying through there now, fruit raising, poultry

raising, and that way it would materially develop the country.

Whereupon, upon recross examination, witness testified, that he had cruised one of these railroad sections at West Fork. He made an application for section 11, township 32 south, range 8 west, about five years ago to the Company, and applied to buy it. He cannot recall the cruise, but it was light, it was about eleven million as near as he could say. He wanted it for milling purposes. The Company told him it was not on the market then, but if they should sell it he would get the first chance at it, and the Company did not sell it to him. It was fir timber, about a quarter of a mile from the railroad near Glendale, West Fork.

Whereupon, upon redirect examination, witness testified, that he never made an application to purchase as a settler, with the intention of settling on the land. The railroad company did not, to his knowledge, sell any of that land to those people that he has spoken of as having lived on railroad land, farming it. He applied for the entire section of railroad land mentioned. It was not farming land, some of it could have been agricultural land when the timber was removed, and he had land value in his mind when he applied to purchase it.

Whereupon, upon recross examination, witness testified, that he had both the timber value and the land value in mind when he applied to purchase. One of these men who went on to this railroad land, these two

farmers that he said were cultivating it now, one went on about six or seven years ago, and the other went on about five years ago. He thinks they went on just before 1907. There was no agitation about it before they went on to his knowledge.

Q. Did you know about this $2.50 an acre clause in this Act of April 10, 1869, or did you hear about that before that?

A. I heard about it, yes. I knew that they were selling at that when the land was still on the market.

Q. Well, did you know that this clause in the Act of Congress of April 10, 1869, that they claimed that the company had to sell it to actual settlers at $2.50 an acre? Did you know about that?

A. Yes, I knew about that.

Q. Now, that is a matter that was known in Douglas County a good many years ago, wasn't it?

A. Well, I dont' know whether it was known generally or not. Those people that followed that line of work—they were acquainted with the conditions?

Q. People who handled real estate titles were pretty familiar with that claim that was made before this late agitation in 1907, weren't they?

A. Well, I was. I don't know in regards to the others.

Q. Don't you know that the question was a matter of common discussion among attorneys of southern Ore-

gon for as far back as 1896?

A. I didn't know that.

Q. You didn't know that yourself?

A. No.

Q. Do you know that it was made a question in a Jackson County tax case in 1896, when Judge Watson was representing Jackson County in that litigation over the taxes in Jackson County?

A. I didn't know that.

Q. But you knew it before the Government commenced this agitation?

A. Oh, yes, this recent agitation.

Whereupon witness testified, that these two families living out there were not on quarters; one of them, Wood, has forty acres, and the other man has eighty acres. The forty acres would be worth perhaps about fifty dollars an acre, and the eighty would be worth about a thousand dollars. He does not know whether the railroad company is paying the taxes on it and these men are getting the benefit of it. The eighty acres lies on top of a mountain called the Bland Mountain, that is why the value would not be so great. On a straight line, these places are about two miles apart. That on the mountain is worth about twelve to fifteen dollars an acre. It is not worth as much as the other forty. The man is making a good living there. The forty acres is worth about twenty-five dollars an acre,—about $1000.

Whereupon, upon redirect examination, witness tes-

tified, that if the railroad company would sell to these men at two dollars and a half an acre, or at such price as these men were willing to pay, the company could relieve itself from the payment of taxes on these lands.

Whereupon H. J. MILLER, called as a witness on behalf of complainant, being duly sworn, testified, that he is twenty-nine years old, resides at Oakland, Douglas County, Oregon, and has lived in that county about seventeen years. At present he and his father are in the manufacture of black oak wagon material. Prior to his going into that business, he worked in the woods considerably; he also did some locating, and ran compass for several different cruisers—acted as compassman for timber cruisers. He is somewhat acquainted with the farming conditions in Douglas County. He worked on a ranch when he first came to southern Oregon for a couple of years, and has had actual experience in farming—has farmed some. He has located people, that is, he took them out and showed them the land, ran out the lines. These people were desiring to make entry of public lands, both homesteads and timber claims, timber and stone applications. He would think, from the appearance of these people who generally desired to file a timber and stone application, that they were people that were fairly well off, that were city people usually. He would think that the homesteaders were a poorer class of people, men looking for homes who desired to engage in the pursuit of farming or ranching. Referring to "Defendants' Exhibit 259," he is familiar with townships 23 to 25, both inclusive, ranges 3 to 5 west, both

inclusive, and has also been in township 23, 2 west. He has been over a great portion of these lands personally and knows the formation and the growth that are on them, and the character of the soil. He would think, as a whole, that 30 to 35 per cent of the land in this area could be rendered suitable for cultivation. The land in these townships is pretty generally the same, unless it is back in township 23 south, range 3 west. There it is more mountainous land, but he does not believe the percentage of that land there that could be tilled would be less. It might be a little less, perhaps, but taking it as a whole, he thinks 30 per cent of it would be about right. Generally speaking, if these lands were divided into a hundred and sixty acre tracts, this average would hold good as to each tract. There might be a hundred and sixty acres that did not have that much—that had practically no farming land at all, while other places might be almost all tillable land. There are lands in there similarly situated that are cultivated, that is, lands that have been timbered. There are settlers in that country that he has described with whom he is acquainted. They raise hay for their stock and garden stuff and some fruit. He thinks that one could raise hay on these lands, most any kind, fruit, garden truck of any kind. Speaking of hay, he means oats and vetch. Vetch is a pretty good crop. Wheat and oats are used as hay in that country. They raise potatoes, cabbage, corn; fruits grow on these lands—apples, prunes, plums, berries, grapes. The size of the tracts cultivated by the settlers in this area in the vicinity of the railroad lands, or on

lands of a similar character, depends, of course, on how much of a place they have. Lots of those fellows in there have big ranches, but they farm from ten to thirty, forty or fifty acres, ten to fifty acres he would say. These farms were generally timbered in their natural state, but they have slashed the brush and burned it, and they have been pretty generally cleared.

Q. Mr. Miller, in your opinion, what has been the effect of the Railroad Company's failure to comply with the conditions of this grant, and in failing to sell the land at $2.50 an acre to actual settlers in tracts of 160 acres? What has been the effect of that failure to comply with these conditions upon the community there?

Q. Go ahead and answer.

A. I think it has kept back settlement and retarded the development of the country.

Q. Are there many demands in your community for homestead lands, people want them to settle on?

A. Yes, sir.

Q. And actually engage in agriculture?

A. Yes, sir.

Q. Are you able to find any open Government lands?

A. No.

Q. Have they been entered?

A. All the desirable ones.

Whereupon, upon cross examination, witness testi-

fied, that he lives at Oakland, Oregon, and is twenty-nine years old, and commenced to locate people on timber lands about ten years ago. To do that, they take them out and find the corners, and show them the land in general, and their fees were usually from one hundred to two hundred and fifty dollars. They never cruised a claim for the man to see how much timber he was going to get approximately. The man was his own judge, usually, whether the quarter was desirable or not. A man could tell pretty well, he thinks, when he looks over a quarter, about what it would run, just by looking at it in a general way. As a locator, he has had some experience in cruising parties, and when he was commissioned by a man to go out and get a timber quarter, he exercised his best judgment, but showed him the land and told him about how much he thought it would run. Having experience with cruising parties and having been in this timbered country for a number of years, he could tell pretty well, approximately, if it would run one million or three million feet to the quarter section; and acting upon his judgment—the party relying somewhat upon that—with his own eyes looking at the corners and running through the timber, the man decided whether he will locate and pay the price. If the man does not take the quarter, he doesn't get any fee for his work. He tried to get a quarter that would be acceptable. He does not know how many of these quarter sections he has located in the last ten years in Douglas County, in these timbered lands, but approximately he would expect that he has located twenty-five or thirty

quarter sections, and of these twenty-five or thirty, he would guess that eight, ten or a dozen were homestead claims.

Q. Did these homestead claimants find satisfactory quarters that you showed, that had good timber on them —these eight or ten, did they take the claims?

A. They took them, yes.

Q. Did you find pretty good timber for them on their quarters?

A. Well, some had timber and some quarters did not have any to speak of.

Q. Some quarters did not have any timber on to speak of?

A. Not of any commercial value.

Whereupon witness testified, that there are not very many open quarter sections of Government land in that country worth taking that are left.

Q. That is what I mean. There are some open quarters on bald hills and rocky points that probably nobody would take except for pasturage? Isn't that true in some parts of Douglas County?

A. Yes, some parts of it, it is.

Some of the vacant land there, perhaps, is practically worthless for timber or for anything excepting it may be for pasture—summer pasture. The average stand of a quarter section in Douglas County would be six or seven million feet—that is not the average, the average,

he would say, would be "three million—two and a half or three million feet." These timber claims that he located he thinks would average about three million feet. These railroad lands he says are about 30 per cent agricultural or tillable, or could be made agricultural or tillable, on an average, taking it all over, he means would become such after the timber and brush has been removed or cleared. These ranches that he said were big ranches are stock ranches. They are on the Calapooia, on the headwaters of the Calapooia. These big ranches were taken at a very early date, usually those large ranches were taken in early days, and they were donation claims. Some of them, he thinks, bought additional quarters, he presumes that they bought the land of the original purchaser. Some of these large holders, he thinks, were people who bought from the railroad company for pasturage, or something of that kind, adjacent to their regular holdings.

Q. Well, now, they then got the better part of the railroad land, so far as it being available for agriculture or for grazing was concerned, didn't they, those that bought first?

A. Yes, it was added to their holdings, I presume.

Q. Well, that was only in the last seven or eight years that these railroad lands that are unsold came to be sought after for timber? Isn't that a fact—the last eight or ten years?

A. Well, I don't know how long it has been.

Whereupon witness testified, that the timber demand became active about twelve years ago, he thinks, and the market was most active, timber was at its highest demand, about six years ago, he thinks, about 1906, and he believes it continued through 1907 and on down to date with more or less activity. He applied to purchase some of the railroad timber lands. He gave an attorney ten dollars, and he sent it in, put in an application for him. This was Mr. Dimick of Portland, who was then at Oakland. He does not remember whether he signed a printed blank application or not, but did whatever he was told to do. He does not remember if he offered to pay, in the application, two dollars and a half an acre, that is what they understood they were to pay—that it could be bought for that. He did not select the quarter section applied for and he never saw it and he has forgotten what section it was in—part of it was on Smith River. It was in that dairy country, on the headwaters of the Smith River. He thinks there was some saw timber on this land—there was good land on it, too. He had never been over it before he selected it, but talked with a cruiser that worked in that country who said he had been all over it and said it was good land, and told him it was good timber. He doesn't remember what the estimate was, he doesn't know positively whether it was very good or not because he did not see it. The cruiser told him that he had better take it. He has forgotten the name of the cruiser and does not know where he lives. He never went out on these lands and settled on them. He worked as a compassman for cruisers, with

a cruising party—he thinks that Roach is the name and that is the company that is paying taxes on the lands. He thinks it is a large timber company, a Spokane company. He worked as a compassman for the cruisers of that company a couple of weeks. He also worked for a man by the name of Ghormley. He has not cruised any of these unsold railroad lands. He worked a couple of weeks for Ghormley, and he has forgotten who Ghormley was working for. They were individuals cruising timber lands.

Q. Now, you say there were some of these settlers in this general territory that you have described, or on some of these lands in the even sections, and they have small parcels cleared. I suppose you mean they have got all the way from an acre up to twenty-five acres, depending on the length of time they have been on their homesteads or their lands, whatever it is.

A I spoke of the ranchers, didn't I?

Q. Well, do you mean ranchers that have been there a good many years?

A. Yes.

Q. Oh, ranchers that made early settlements in there?

A. Yes, ranchmen and homesteaders.

Q. These ranchers some of them have been there 30 or 40 years, haven't they, up those streams?

A. Some of them, yes.

Q. Some of them have been there, took land under

the donation law away back in the early days?

A. Yes, sir.

Q. They are the people that you referred to?

A. Oh, no; I referred to homesteaders.

Q. Well, some of those homesteaders have settled in there as far back as 1862.

A. I referred to homesteaders, if I remember right, as having approximately 10 to 50 acres.

Q. They have been there 10 to 40 years, some of them, haven't they?

A. A great many of them have. Some of them have not.

Q. They are mostly on streams or little valleys on the headwaters, and some of those streams, aren't they, those you speak of?

A. Some of them are, yes.

Q. Most of them are, are they not?

A. Yes.

Whereupon witness testified,

Q. Did you ever see any abandoned homestead cabins up in the woods where there were people who had apparently made final proof and left their shacks and gone away?

A. I have seen some, yes. I guess they were homestead cabins, they were cabins at least.

They were cabins on timber quarters and they were

not occupied and had not been for years, according to the way they appeared, and might have been hunters' cabins, or trappers', so far as he knows. He does not know whether they were really hunters' cabins or not, and he doesn't know that all of them were old abandoned cabins that people had formerly built there on these lands to take them up, some of them were. They were not occupied at the time he saw them, and had not been for years, and were rotting down and abandoned.

Whereupon, upon redirect examination, witness testified, that there are extensive clear bottoms along some of the streams where the settlements are on the streams in the vicinity of these railroad lands. These bottom lands are as good lands as they have anywhere. Usually it was heavy timber originally. There are some benches through these mountains that settlers are living on.

Q. Now, you spoke of the abandoned cabins that you knew were homestead cabins. How many of those cabins have you seen that you recall, that you actually know have been homesteads, and used merely for the purpose of obtaining title to land under the homestead law, with the purpose or intention of abandoning them?

A. They were deserted, you mean? They were put there and did not expect to prove up, do you mean?

Q. They were put on there merely as a make-shift to obtain title to the land from the Government?

A. Well, I don't know of any that were put on there with those intentions. I don't know what their in-

tentions were, in fact.

Q. Well, how many abandoned cabins have you seen on claims that you knew were obtained from the Government by homestead entry, that you know had been homesteaded?

A. I don't know more than four or five.

Q. How many settlers who were actually living on their homestead, and making a living from the land, do you know in the vicinity of these railroad lands?

A. I know lots of them.

Mr. Fenton: Homesteads you are speaking of?

A. Homesteads, yes, sir.

Q. Were the lands that are farmed in this community generally timbered lands prior to being put under cultivation?

A. Well, part of them were. Part of them were not.

Q. What were not?

A. It was a prairie; always had been, I guess.

Q. Where is that prairie located, or are there different prairies?

A. Oh, yes, there are different prairies. There is prairies all over, quite often run into a prairie in the woods, you know—open land.

Q. What is their condition?

A. It might have been an old burn, you know.

Q. Is that a general condition throughout this section of the country?

A. Part of it, yes.

Q. Does it extend into these railroad lands? That is, do you find any of the prairies in these railroad lands that you are acquainted with?

A. Yes, sir.

Whereupon O. M. CARLSON, called as a witness on behalf of the complaintant, and being first duly sworn, testified, that he is thirty-five years old, resides at present in Brownsville for the last year, lived in Oregon since 1900, and has lived in Township 15 South, Range 3 East of the Willamette Meridian, in that neighborhood. Most of the experience in farming that he has had was that he took a homestead there and cultivated it, and part of the time he worked out in the timber and for farmers. His homestead is in Township 15 South, Range 3 East, in Sections 24 and 25. He had farmed prior to that time. He was born and raised on a farm in Sweden. He lived on his homestead until a year ago last fall. He was up in that neighborhood. He got married then, a year ago last fall, but he was single all the time while he had his homestead. He had about four acres under cultivation on his homestead, planted a garden and potatoes, and had the remainder of it seeded in grass. Referring to Defendants' Exhibit 259, from Brownsville up the river, he has been up clear to Crawfordsville, to the headwaters of the

Calapooia, as shown on this map, extending up to Township 15 South, Range 4 East. He has been through from over on the Mohawk from Springfield, all through the Mohawk. From Springfield all through there, through the Mohawk country; he has been on that and through from Crawfordsville over to the Mohawk to Marcola. There is Marcola and Wendling also, and part of McKenzie, from Springfield up to Thurston, Walterville, Leeburg and Vida or Gate Creek, what they really call that, and as far up as Blue River, which is on the McKenzie. He has been up to Leeburg there, south of the river, where he has been working. A considerable portion of that land in there is owned by the Booth-Kelly Lumber Company, who purchased it from the railroad company, as shown by the blue markings. He has a general acquaintance with the lands in the vicinity of Mabel, and general knowledge of the lands in Township 15 South, Range 1 West, north of Mabel, and is acquainted with the lands in Township 17 South, Range 1 West, and that vicinity. He has also been over in there at Camp Creek. The lands up the McKenzie in Township 16 South, Range 2 East, are above Vida, above Gate Creek, some call it Vida. Gate Creek is not marked on the map, and is located in that township and he is acquainted with the southern part of Township 16 South, Range 1 East. He has been over that country, working on the Mohawk, and working on the McKenzie, and traveled through that timber on the trails. He went over there and has been hunting over in there a good deal, and the general character of

that land in that country is pretty well timbered, and some openings, some burned off a good many years ago. He is acquainted with the farming conditions in this section of the country, and the lands that are farmed successfully. In his opinion eighty per cent of these lands could be rendered suitable for cultivation; that is, suitable to plowing and raising crops by cultivation, after the timber and brush have been removed. There are lands in that vicinity of the same character as these railroad lands which are farmed; and these farms are occupied by settlers living on them. He has been out over some of these railroad lands; he was out there one year with some timber cruisers of the railroad company and they told him they were railroad cruisers, but he never found out what company they were cruising for. In his opinion the unsold lands of the railroad company would be suitable for homestead purposes. Whereupon on cross examination, witness testified, that his homestead is on the West half of the northwest quarter of Section 25 and the west half of the southwest quarter of section 24, township 15 South, Range 3 East. His nearest post office is Blue River, in Lane County, on the McKenzie River. His homestead is closest to the railroad from Springfield and up on the McKenzie and then he goes from Vida on the wagon road that goes up to the mines. He passes through Vida, and his homestead is probably about 15 miles east of Vida, down on the Calapooia—the headwaters of the Calapooia, which runs into the Willamette at Albany. It must be about 30 or 40 miles from Albany, more than that to his home-

stead, about 50 miles from Albany; that is, it is about 20 miles up into the mountains from where he leaves the foothills and valley. He took his homestead in 1900. It is mostly saw timber on his homestead. He had never cruised it, or had it cruised. There may be a good 3,000,000 feet on it, for all he knows. It is principally fir, red and yellow, good standard saw timber and some hemlock. Hemlock is good saw timber where it is large enough and is used to make boxes and box shakes for fruit shipments, which is quite an industry in this country. He has about four acres of the 160 acres cleared, in one place. He did not find a clearing there when he started. It was not a burn, it was on the bottom, right on the Calapooia River bottom. It was covered with brush and timber, vine maple brush, the most of it. There was some saw timber on the four acres that he cleared, probably about six or seven big trees. He built a cabin on it and lived in the cabin, and when he went away to work he left his things in the cabin. He would go there and stay a few days and make a garden, and make a little clearing, and then he would go off to work and come back again, he lived there quite a little bit, but of course he had to work out for a living, he could not make a living on the homestead alone. He lived on it five years and kept up this method of working out and going back to his place. He left his bedding, stove and things of that kind in the house when he went away. He locked it up and did not leave anybody in charge. Some of the homesteaders did the same way and some of them were married and stayed on their land with their families,

they would go out and work and leave their families at the place, they had to do that to get started. It would take them, he should judge, two or three years to get started. He did not have any money to buy stock with until he got started there, and that was the reason why he did not raise stock and let them roam over the mountains, and make his living that way. He owns this quarter section still. He does not know of any land being sold in there. He does not know whether he could get fifty cents a thousand for it or not, he never offered it for sale. He has heard that the best timber had been bought there from seventy-five cents to a dollar a thousand, but of course that is all he knows.

Q. Well, if it was sold at $1 a thousand, your quarter section having about 3,000,000 feet on it, would be worth about $3,000?

A. Yes, I think it would.

He got married a year ago. There is no wagon road in there, and it was inconvenient to bring a woman in there, so he could not get in there as handy and live there as he did before when he was single. When he was single he could go through the mountains and on trails. That is a timbered country principally. Eighty per cent of that land could be farmed after the timber is logged off, and the stumps are either burned around or blasted out, and the timber removed.

Q. Well, Mr. Booth says that would cost from $50 to $250 an acre to do that, you know Mr. Booth, don't you?

A. Yes.

Q. Well, is that about what it would cost in your judgment?

A. Well, I don't suppose it would cost quite as much as that.

Q. Well, if a man did his own work it would not cost that much?

A. No, it would not.

Q. But he would be 30 or 40 years in clearing 160 acres of timber land if he did it by himself, wouldn't he?

A. Oh, he might.

He only knows of two homestead cabins up in that timber land where the people who took homestead claims had made their final proof, or had commuted and paid the cash and got the title from the Government and had moved away, these were timber lands and the parties proved up and still held the lands. It is good timber lands like his. They were not friends of his. He knew them, and they are both dead now. When they were proving up and living there, they left and worked out just as he did. They moved away before they died. They had the same kind of improvements and occupied them the same way as he occupied his. One was a married man and one a single man. The widow of the married man is still living, but not on the place, she has moved away. Whereupon on redirect examination witness testified, that one of these homesteaders who died, lived on his homestead until about five months before

he died. He was ill when he left, and had to be carried out of there, he left to get medical attendance. There are people still living there in that section of the country earning their support from their places or homes. He was a single man all the time that he had his homestead, and he did not consider his absence from home as being any inconvenience. If he had been a married man, he would have cleared more of his land and made it self supporting. He has noticed the difference between the single homesteader and the homesteader who is married as to the development of his homestead. The married man really makes that his home, and keeps it up in better condition to make a home out of it. A single man goes ahead and does as near as he can. He might not get quite as much improvements as a married man. He has noticed that a married man is more inclined to become a farmer than a single man who settles on a homestead, unless he marries and brings his wife on the homestead.

Q. Mr. Carlson, in your opinion, has the manner in which the railroad company has handled these lands, especially in selling to large purchasers, and in withholding from sale and refusing to sell, to comply with the conditions of the grant to sell to actual settlers in 160-acre tracts at $2.50 an acre, has that had any effect on the settlement of the community that you have been acquainted with?

A. It has been a drawback to the country, keeping settlers from coming in and settling up the country.

Q. This country is generally a timbered area, isn't it?

A. Yes, it is.

Q. Well, the people who are farming there, engaged in farming now, what were their lands in their native or natural state, originally?

A. Well, at one time in the early days, they was all timber.

Q. They had to clear their land before they could cultivate it?

A. They had to clear it to put it in cultivation.

RECROSS EXAMINATION.

Q. They settled first on the streams, and got creek bottoms, river bottoms, and what little cleared land there was?

A. Yes.

Q. Some of them took donation land claims up on the Calapooia?

A. Yes.

Q. A great many years ago?

A. Yes.

Q. They started out with a few acres already cleared, and then as they wanted to extend their farming, why, they would clear the little brush that was there?

A. Yes.

Q. And in that way, in the course of 50 years, they

got a few acres of plow land?

A. Oh, yes.

Q. Now, these settlers that you say, these homesteaders that you say that you know are still living in there, have they all proven up?

A. Nearly all proved up.

Q. They don't move away as a rule until they prove up, do they?

A. No.

Q. After they prove up, why, then they can go wherever they please. If they want to sell the land to timber people, they can do it?

A. I suppose so.

Q. Well, they do that if they want to, that is, timbered land, isn't that right?

A. Yes.

Whereupon on redirect examination witness testified, that they can sell, after they get itle, and they can do whatever they please with the lands, sell it or keep it. These settlers that he speaks of are still living there, they went on this land about the same time as he did, and have obtained their title. Whereupon on recross examination witness testified, that he was a single man and did not have any home, and he wanted a home and a place to stay. The timber was there and he could not very well get around it without taking the timber and ground together. He took it in 1900 and he did not

know of any timber that was being sold in Linn County very much. The Booth-Kelly people had bought a lot of timber around in all their section, he supposes about that time. He did not hear very much said about the fine timber up in that country at that time, and did not until later years. He did not go out anywhere else to try to find a quarter section that was all clear. At the time he took his homestead he did not know at all how much timber there was on it, but he thought it was pretty good timber. He went over it before he took it. He talked with timber people or his neighbors about how good the timber was before he filed on it, and they said there was timber on it, but they were there ahead of him. Any quarter section up there had timber on it.

Whereupon, on redirect examination, witness testified, that in 1900 timber had no value in that country, practically. When he took his homestead the fact that it had timber on it, did not enter into his mind, or influence him in taking it; the thought of it did not influence him in taking it. He would have preferred to have had land without the timber, that is, cleared land, with the timber off the land. If he had to do it over he surely would have the land and not the timber. There were no open lands open to homestead entry in 1900 below him. They were all taken up then. They went on the Government land and squatted there, and in 1901 the Government surveyed that township. He took the best land that he knew of for homestead purposes, and with the intention of making a home out of it. Whereupon on recross examination witness testified, that he

had made a home of it, he has not left it yet. Whereupon on redirect examination witness testified, that he moved to Brownsvile only a year ago (1911) and he made his proof in 1907. He lived there four years after he made his final proof.

RECROSS EXAMINATION.

Q. How much time did you work out during the four or five years that you claim you were living on your place?

A. Well, maybe half of the time.

Q. And the rest of the time where did you live?

A. I lived on the homestead.

Whereupon JOHN THOMAS DEADMOND, called as a witness on behalf of complainant, being duly sworn, testified, that he was born in Lane County, Oregon, in 1854, and has lived in that county almost all of his life. He was born on a farm about three miles north of Eugene City. His father had several farms, and at that time he had three hundred and twenty acres in the valley—an old donation claim. He worked on his father's farm until he was about seventeen or eighteen years old, and he farmed near Harrisburg, Lane County, in the northern part, next to the line, for three years, besides the work he did on his father's farm. He is running a rooming house in Springfield at the present time, and after he quit farming he was a contracting logger, commencing about 1877. There are different ways of farming—some raise some kind of grain, small grain, vege-

tables, fruits, stock raising. In other ways than from his own actual experience, he has come in contact with the farmers and has become acquainted with quite a few methods of farming lands and the crops that they raise on them, and is acquainted with the productive soils of that country, that will produce crops, and with the character of the lands that can be cultivated and tilled. He had a farm—his wife owned it. He bought a piece of railroad land in section 1, township 17 south, range 1 east, of seventy some odd acres. He does not remember just exactly whether he paid three or three and a half an acre for that, it has been sometime since he bought that land, but it must have been about 1882 or somewhere along there. Of the crops produced in the farming industry in Lane County, there is wheat, potatoes, vegetables of all descriptions, grain, hops, garden products. The land cultivated there where these products are raised is of different character, there is a dark heavy loam that produces well, some grain and hay, and there is a sandy soil which produces vegetables of all descriptions—bottom lands, and there are hill lands which produce fruit and vegetables of all descriptions. The land that he bought from the railroad company was largely timbered, some brush in places—mostly timbered when he purchased it. He farmed it after he cleared up the land, and made a home there and lived on the place. That was in township 17 south, range 1 east, and he thinks the Booth-Kelly Lumber Company has land right adjoining that. They have timber—timber lands in there. He earned a support from this land which he purchased

from the railroad company. He did not have very much when he went there. His family consisted of one boy, three girls, and his wife. He does not know the altitude of this land. The railroad land which he bought was in the northeast corner of section 1. After he cleared this land he raised most anything that he wanted to there—garden, oats, wheat, hay, or anything that he wanted to plant, including fruit. This particular place that he is speaking of now that he bought from the railroad company—Mr. Albert Ward has that place now and is farming it—is still used as a farm. Witness cut a good deal of timber off of this place, and cleaned it up. When he was on the place, he cleared about eight acres, put it in cultivation, and brushed off and seeded down about twelve acres more to grass and made a pasture out of it. Since then this has all been grubbed off, they have cut all the timber down and grubbed the stumps out, and made a farm of it, it is not all cleared, he does not know exactly how much of it is cleared. Part of this land in that territory is called hill land—bench land or bottom land, some of it is bottom land. There is a distinction between hill land and bench land. When one gets up on the bench land it is more heavy soil, of a different kind of clay a little, and it is flat, and then there are benches that go up, and so on back—terraced. There is a bench there that produces just as good grass as the bottom land, and there is some of it produces better fruit, while the bottom land is better for vegetables, for hop purposes, or such as that. Referring to "Defendants' Exhibit 259," he has been down around

Springfield, Thurston, Walterville, Leeburg, and there is Vida in there somewhere, which is at the mouth of Gate Creek. He does not know as he could tell exactly the township of these green lands, that is, of the territory with which he is acquainted. He was in section 1, township 17 south, range 1 east, right on the north side of the river, somewhere about three miles—probably three and a half miles by wagon road, to Leeburg. He does not know the distance straight through, and in fact he has been all over this territory, all over these tributaries, hunting and fishing—he has roamed all around.

Q. Sufficiently to acquaint yourself with the formations of the land and the soil, and its adaptability to cultivation?

A. Partly, yes. I have noticed quite a little bit of the timber and everything else.

Whereupon witness testified, that he had been in most all of township 16, has hunted in township 16, range 1 east, and 17-1 east, and also in 18-1 east, from the summit of the mountain, from Fall Creek on both sides of the McKenzie River. He has been in township 16 south, range 2 east, in the vicinity of Vida, and is acquainted with the lands in that township. He has been from Vida quite a little, that is quite a burn in through there. He has been through Vida and up Gate Creek. There is quite a big burn up through there until one gets back on the mountain between the Calapooia side and the headwaters of the Mohawk, and then there is green timber from that on back, and this is bench land—dif-

ferent land. There are settlers in these various townships he has mentioned, people living on farms there, farming the lands. In township 16 and on Gate Creek, there are quite a few setlements in there. There is quite a good settlement up in what they call the forks of Gate Creek, and in townships 16 and 17, range 1 east, also. There are quite a good many settlers in township 17. He is not acquainted much with township 16 south, range 2 east, about Wendling, but is acquainted in and about Camp Creek, township 17, range 1 west of the Willamette Meridian there, and is pretty well acquainted with the lands in township 17, range 1 west, in the Camp Creek district. That is mostly farming country down in there. There are some settlements up the McKenzie River and in east there within ten or fifteen miles of the summit of the Cascade Mountains. He does not know exactly where this railroad grant runs, but if it runs up there it runs a good long ways, but he does not know exactly how far it runs. Township 16, range 2 east, is twenty-five miles beyond Vida, and Vida is in section 34, township 16 south, range 2 east. Twenty-five miles beyond, going east, would carry one outside the limits of the grant—that must be outside the limits of the grant because it is within ten miles of the county line. The grant does not extend to the summit of the mountains that he knows of. One leaves here and goes to the headwaters of the McKenzie, gets to the summit of the mountain, and this place that he speaks of is on what is called Lost Creek, at a little place called White Branch, owned by Mr. Lewis. Also on the same creek

just below him, there is what is called the Lost Creek station. They have been living on that for a good many years, and then just below, down at Foley Springs and Belknap Springs and McKenzie Bridge.

Q. Now, Mr. Deadmond, in your opinion, what percenetage of these railroad lands could be rendered suitable for cultivation in this area that you are acquainted with?

A. Well, now, there is different land. The percentage is owing to what a man would want them for, for agricultural purposes. He would have to dispose of the timber for to make any cultivation.

Whereupon, witness testified that the timber would have to be removed to make the land suitable for agricultural purposes. Part of this is a timbered country and part of it is burned. It was a timbered country, but it is a big burn. There is not much merchantable timber on that burn, that is in there by Vida. It is quite a big burn in through there which has no merchantable timber to speak of. West of the meridian line, there would be one-half of that, after the timber was removed, that would be good for agricultural purposes and grazing. East of the Meridian, it would not go quite as much—probably one-third. West of the meridian, he believes, there could be pretty nearly half of that which could be plowed after the land was cleared. These lands are a good deal the same in general formation and soil as the lands that he farmed up there, on which he lived in that locality. He knows from experience that these lands

are productive and will produce good crops—he thinks they will, of course, there are exceptions. In some places he does not think one could raise anything on it, due to stony land. There would be breaks in the timber or forests, there would be small burns, and then a good big strip of timber. But in lots of cases the timber extends right along for several miles. Lands similar to this area have been successfully farmed and are being successfully farmed now—part of it—that is, lands that have been timbered and cleared.

Q. About what areas do these men cultivate over, those farmers that live in this area, about how many acres do they generally have under cultivation?

A. Well, there is some places that they run different amount of acres. Some small places that they are farming, and some that is larger. Some in that territory there is fifty or sixty or seventy acres.

Whereupon witness testified, that of the men that are actually farming there, engaged in that business, making a living, take it all around up there, it will run twenty to twenty-five acres that they are farming. This bench land produces first-rate, especially for fruit, it produces a little better fruit, to his notion, than the bottom lands—that is, what he has seen up on those benches, is better fruit. There is more or less of this bench land all the way through that country that he is acquainted with. It runs all over the mountains, climbs from one bench to another, and then on until one gets to the summit. There is what they call a divide on each

side of the river, and then clear on through to the Cascades—natural terraces.

Whereupon, upon cross examination, witness testified, that he bought this railroad land somewhere about 1882. He was the first purchaser. He went onto this land, he thinks, about a month after he bought it, and lived on the land for some seven or eight years. In addition to living on the land, he ran a logging business. The logs were rafted from there to Corvallis, some of them. He logged for Max Friendly of Corvallis, the Corvallis Lumber Company. During the time he lived on this piece of land, he was in the logging business most of the time.

Q. And that is why you wanted to get up there in that vicinity, so as to be handy to your logging?

A. Well, that was my business at that time, I went there on the river to log in the first place.

Q. That was the reason why you wanted to get up in that neighborhood so as to be handy to your logging business?

A. Well, it would be naturally the case, that I wanted to get handy.

Q. I just want to ask you if that was the reason?

A. Yes, sir.

Whereupon witness testified, that Foley Springs and Belknap Springs are summer resorts, pretty well up the McKenzie in the mountains. They are mineral springs, and places where people go in the summer and

spend a few weeks, do fishing and some hunting, going back into the mountains. During the winter they are not open except to the care-takers—that is about the way. They have located those springs, he supposed, for that purpose—for summer resorts. They are about fifty-six miles east of Eugene by wagon road, and there is a good stage road up there. The McKenzie Bridge is six miles below Foley Springs. There has been some farming there. Itis a great place there for fishing etc.—summer resorts. Of the people that have settled in there, some have settled recently and some of them have been in there for a good many years.

Q. Those that were in there a good many years ago, they catered to the summer trade, sold them vegetables, eggs, chickens and things of that kind, didn't they?

A. Yes, sir. Mr. Powers was there for a good many years.

Witness got some of the logs off of this piece of land that he bought. He thinks he cut off of this seventy acres, about as near as he can remember now, somewhere near two million feet of fir timber, and it had just a tolerably good stand. He does not think it was an average—not quite as good as the average. He thinks that he cut about two million feet off of this seventy acres, as near as he remembers now. This he cut off was sold along in the eighties sometime, for a sawmill at Corvallis. He did not raft the logs—they did the rafting. He delivered them to his people and they took them

in the water on his place, and they rafted them down to Corvallis. They did not go to Eugene. They went down the McKenzie River, which empties into the Willamette below Eugene, and from there they went to Corvallis. That was the customary way they had of getting logs down out of the mountains. When he farmed near Harrisburg, he was on a place that belonged to Mr. Kennerly, about five or six miles up the river from Harrisburg. It was on the prairie, south of Muddy. He was never on the Henry Schooling place out on Muddy, but knows pretty near where it is. This place is south of there eight or ten miles. That is all old settled country, it was taken up under the donation law. This was a donation claim that he was on there farming. It was valley land, practically always clear. In some locations in the early days when they settled in the Willamette Valley, the amount of oak timber, oak grubs and small fir was very much less than it is at the present time. He guesses that it is accounted for by the fact that the Indians in the early days used to burn the grass in this young timber and keep it from growing, and that since that has been discontinued the oak timber has grown up. The burns used to keep down the brush, and so on.

Q. And since the white men have come in and gone to enclosing the premises, and stopped this grass that used to be six or eight feet tall here in the Willamette Valley on the prairies, why, the oak grubs have grown up in a good many places that didn't have them before.

A. Not down on this level ground, not on the

prairie, I don't think.

Q. Some fir groves have grown up, haven't they, around about Salem and out beyond?

A. Up in there, but in the valley, in this farming at the time when those farms were taken up.

Q. It was always clear?

A. Yes, sir. On the hills this oak grub possibly has grown.

Whereupon witness testified, that there were some old donation land claims on the Mohawk River, about seventeen miles east of Eugene, and there were donation claims up the Mohawk quite a ways, settled in the fifties when he was a small boy. The foothills, some of them, were parts of these donation claims—they run up on these benches, and as one got further back into the mountains the saw timber began. About 1892 there was the biggest demand for timber lands, as he recollects it, outside of this local demand for sawmills such as he supplied. The general demand for timber, he thinks, was the biggest about 1892, when there was quite a little rush—1892 and 1896 they were after the timber, he thinks, that is as far back as 1896. He does not remember exactly what year it was that the Booth-Kelly Lumber Company began to operate around Wendling and Saginaw and up in that country. The timber demand became pretty active after they began to buy in there, and just shortly before they went in, and since that time there has been pretty good demand for timber lands. Some of these lands he has cruised over himself.

He would go on some of those timber lands that they have had, and was logging it off by forty acres, etc. He would go and cruise that before he went to work on it, to see how many million feet he was going to get off. He logged the timber on contract with the owner of the land, the owner would sell some of the stumpage for seventy-five cents, and some for one dollar, he thinks, that is, the time he was speaking of when the Booth-Kelly Lumber Company went in there. He logged for those farmers, that is for people that had small pieces of land there, and they got different prices for their timber. Some of them would get as high as a dollar, from that down to fifty cents, depending on the distance from water, and what they wanted to get it off this land. These settlers that he speaks of up there up where this timber was, aside from those who have settled on donations and along the little streams, have gone in there in the last few years, since he had been in the logging business. He was in the logging business in 1877, and there has been quite a little bunch of settlers in there since. He has been around over that timbered country and noticed a good many people had purchased timber quarters under the Timber and Stone Act. The class of people generally who bought under that act had the money to pay for it. He thinks they paid two dollars and a half an acre for it. He noticed whether any of these homesteads were up there on the timber lands.

Q. Has your experience informed you as to whether or not a good many of these, or some of these homestead claims, located on these timber quarters of good value,

the improvements were abandoned after they had got their title or made their final proof?

A. Well, there is a question there that is a little different to me. There is homesteaders that went in there in this here timber belt that never complied—he was not a homesteader, he was a speculator.

Q. But he used the homestead law for the purpose of getting title?

A. Yes, he must have done it, because he never done anything on it.

Q. And he would simply build a little shack and go out and stay.

A. That is some.

Q. I understand. Go out and stay two or three nights in the six months, and clear up a quarter acre for a garden, and sleep there two or three nights? He would do that until the 14 months expired, and if he had $2.50 an acre, he would commute and get his patent?

A. Yes, sir.

Q. Or he would stay the five years in this way, and work out, and finally get his patent?

A. Yes.

Q. Then he would vacate his premises and sell it for timber?

A. Well, no; not all those that lived the five years.

Q. But, generally speaking, they commuted, those fellows that wanted to sell?

A. Yes, those that commuted generally come there 14 months, as you say, and get the title, and probably you wouldn't see them any more in there. I call them speculators.

Q. Some of these people would be men who were working for the timber companies and sawmills, and would go out as hired men?

A. Yes, sir.

Q. Wasn't it a common thing for them to say: "Now, gentlemen, you can get $300 or $400 by using your homestead right for me, and I will put up the money when the time comes, and you will convey it to me." Wasn't that a common practice?

A. Well, I heard that talked, yes.

Q. And that was done quite generally in this timbered section. Isn't that right?

A. Yes, sir.

Whereupon, upon redirect examination, witness testified, that he had mentioned as resorts Foley Springs and those soda springs up in the mountains. Those springs are beyond the limit of this grant quite a distance, as shown by the distance from Vida, quite a distance east of that as shown on the map there. He could not tell how far they are from this town of Vida. It must be twenty miles up there, by wagon road, and they are fifty-six miles from Eugene by wagon road. These resorts are in the Forest Reserve.

Q. Now, if this land was divided into 160-acre

tracts, Mr. Deadmond, about what would be the average amount of land that could be cultivated in each 160-acre tract?

A. You mean the entire tract clear east?

Q. I mean the lands, the railroad lands, that you are acquainted with there in the area that you have testified to.

A. I think it would go forty per cent, something like that. That is, after the timber was removed.

Q. Yes, after that is what I meant. What is your opinion as to whether these tracts would be suitable for settlement for farming purposes, as a homesteader, bona fide homesteader?

A. A good many of them would make homesteads, if they was cleared up, and timber cleared. A good many of them would make nice little homes.

Q. Now, you spoke of hometsead claims in that vicinity there, some speculative homestead claims and other homestead claims. Now, please explain what you mean by that, Mr. Deadmond?

A. What I mean by that, there was some of those settlers went in there and improved the land when they bought them, and cleared it up, and made nice little places, while others did not do anything, only just simply built a little shack and go off.

Q. Do you mean the homesteaders who went in and improved? Did they continue to live on their lands?

A. Yes, sir.

Q. And are living there on it?

A. They proved up, and some of them is still living on it.

Q. They took them up for homes?

A. Yes.

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